

BEFORE THE WEST VIRGINIA BOARD OF MEDICINE

IN RE:

DAVID ELWOOD HESS, MD

**Complaint Nos. 18-145-W
 19-15-W
 19-27-W**

CONSENT ORDER

The West Virginia Board of Medicine and David Elwood Hess, MD, (“Dr. Hess”) freely and voluntarily enter into the following Consent Order pursuant to West Virginia Code § 30-3-1, *et seq.*

FINDINGS OF FACT

The Board and Dr. Hess stipulate to the truthfulness and accuracy of the facts, as set forth herein below, except where expressly denied by Dr. Hess:

1. Dr. Hess holds a license, License No. 17552, to practice medicine and surgery in the state of West Virginia, which was originally granted on November 8, 1993. Dr. Hess’ address of record with the Board is in Bridgeport, West Virginia.

2. Dr. Hess is registered with the Board as a Controlled Substance Dispensing Practitioner, registration No. 1381, to dispense controlled substances to patients from his office-based practice location at 215 West Main Street in Bridgeport, West Virginia.

3. Dr. Hess’ West Virginia medical license was previously disciplined by the Board pursuant a Consent Order entered on October 26, 2009 (the “2009 Consent Order”). Pursuant to the 2009 Consent Order, the Board determined that probable cause existed to substantiate charges of professional misconduct against Dr. Hess for gross negligence in the use and control of prescription forms, pre-signing blank prescriptions forms and unprofessional conduct. Under the

2009 Consent Order, Dr. Hess was publicly reprimanded, placed on probation for a period of five (5) years, fined \$1,000.00, and ordered to complete twenty (20) hours of continuing medical education in the subject of office management practices. Further, during his period of probation, Dr. Hess was prohibited from employing any physician extender with prescriptive authority. Dr. Hess completed his five-year probationary period in October 2014.

4. This Consent Order relates to three separate Initiated Complaints against Dr. Hess, designated as Complaint Nos. 18-145-W, 19-15-W and 19-27-W. Each of the three complaints were initiated by the Board's Complaint Committee.

5. As a result of its investigations into Complaint Nos. 18-145-W, 19-15-W and 19-27-W, the Board determined that probable cause exists to institute disciplinary proceedings against Dr. Hess for violations of the professional conduct standards set forth in the West Virginia Medical Practice Act.

6. On January 18, 2022, the Board issued a *Complaint, Notice of Hearing, Pre-Hearing Directives and Protective Order* ("CNOH") upon Complaint Nos. 18-145-W, 19-15-W and 19-27-W, which set forth Nine Counts of professional misconduct against Dr. Hess. [See CNOH, attached hereto as **Exhibit A.**]

Initiated Complaint No. 18-145-W

7. On September 9, 2018, the Complaint Committee authorized Initiated Complaint No. 18-145-W against Dr. Hess, based upon information received that Dr. Hess had engaged in inappropriate sexual relationships with multiple female nurses who were patients of Dr. Hess.

8. The Board's investigation into Initiated Complaint 18-145-W substantiated that Dr. Hess engaged in professional sexual misconduct by having sexual and/or romantic relationships with three female patients, referred to as Patients A.G., B.C. and B.P.

9. Dr. Hess admits that he engaged in sexual and/or romantic relationships with Patients A.G., B.C. and B.P., while in a physician-patient relationship with each individual.

10. Dr. Hess admits that his conduct, as described above, constitutes exercising influence within the patient-physician relationship for the purpose of engaging a patient in sexual activity, in violation of the professional conduct standards for physicians as set forth in W. Va. Code § 30-3-14(c)(8) and W. Va. Code R. § 11-1A-12.1.r, as alleged in Counts 1, 3 and 5 of the CNOH.

11. Dr. Hess further admits that his conduct, as described above, constitutes unethical and unprofessional conduct, and further constitutes professional sexual misconduct, in violation of the professional conduct standards for physicians as set forth in W. Va. Code § 30-3-14(c)(17) and W. Va. Code R. § 11-1A-12.1.e, 12.1.j and 12.2.d, as alleged in Counts 2, 4 and 6 of the CNOH.

12. Dr. Hess prescribed controlled substance medications to Patients A.G., B.C. and B.P. as part of a course of treatment.

13. Dr. Hess specifically denies engaging in sexual and/or romantic relationships with Patients A.G., B.C. and B.P. in exchange for prescribing controlled substances and that his prescription of the same were for legitimate medical reasons and in the course of his medical practice.

Initiated Complaint No. 19-15-W

14. On January 13, 2019, the Complaint Committee authorized Initiated Complaint No. 19-15-W to investigate Dr. Hess' prescribing practices. Complaint No. 19-15-W was initiated based upon a report from the West Virginia Board of Pharmacy, through the Controlled Substances

Monitoring Database Review Committee and Advisory Committee, which identified Dr. Hess as a practitioner that had prescribing patterns considered to be abnormal or unusual.

15. The Complaint Committee conducted an investigation into Complaint No. 19-15-W and obtained an independent physician review of patient medical records and prescribing records for sixteen of Dr. Hess' patients, identified as Patients 1 through 16.

16. With respect to Complaint No. 19-15-W, the Board alleged in Count 7 of the CNOH that Dr. Hess engaged in professional misconduct in violation of W. Va. Code § 30-3-14(c)(17) and W. Va. Code R. § 11-1A-12.1.x, by failing to practice medicine with that level of care, skill, and treatment which is recognized by a reasonable, prudent physician in the same or similar specialty as being acceptable under similar conditions and circumstances.

17. Dr. Hess disputes and denies each and every allegation of professional misconduct and the alleged facts surrounding and supporting the professional misconduct set forth in Count 7 of the CNOH.

Initiated Complaint No. 19-27-W

18. Dr. Hess is registered with the Board as a drug dispensing practitioner, registration No. 1381, to dispense controlled substances to patients from his practice location. Dr. Hess' registered drug dispensing location is his Bridgeport Office located at 215 West Main Street in Bridgeport, West Virginia.

19. On August 21, 2018, the Board conducted an inspection and audit of Dr. Hess' drug dispensing practice at his Bridgeport Office, which identified potential violations with respect to Dr. Hess' controlled substance dispensing and recordkeeping practices.

20. On January 13, 2019, as a result of the inspection and audit, the Complaint Committee authorized Initiated Complaint No. 19-27-W against Dr. Hess to further investigate Dr. Hess' controlled substance dispensing practices.

21. On October 17, 2019, Board investigators conducted a follow-up inspection and audit of Dr. Hess' drug dispensing practice at his Bridgeport Office.

22. With respect to Complaint No. 19-27-W, the Board alleged in Count 8 of the CNOH that Dr. Hess violated the Board's drug dispensing rule set forth in W. Va. Code R. § 11-5-1, et. seq., as follows:

- a. Dr. Hess improperly permitted nonphysician staff members who were not registered as drug dispensing practitioners to administer Meperidine injections, a Schedule II controlled substance, to patients at his Bridgeport Office, in violation of W. Va. Code R. §§ 11-5-5.8 and/or 11-5-7.1;
- b. Dr. Hess inappropriately permitted nonphysician staff members who were not registered as drug dispensing practitioners to have custody and access to controlled substance medications at his Bridgeport Office, in violation of W. Va. Code R. § 11-5-6.4;
- c. Dr. Hess failed to maintain adequate records with respect to controlled substance medications administered and/or dispensed at his Bridgeport Office, in violation of W. Va. Code R. §§ 11-5-5.6 and/or 11-5-9; and/or
- d. Dr. Hess failed to maintain adequate records with respect to his controlled substance medication inventory at his Bridgeport Office, in violation of W. Va. Code R. §§ 11-5-5.6 and/or 11-5-9.

23. The Board further alleged in Count 8 of the CNOH that Dr. Hess permitted nonphysician medical office staff to administer injections of Meperidine, a Schedule II narcotic medication, in violation of the standards of acceptable professional and ethical conduct and/or medical practice set forth in W. Va. Code § 30-3-14(c)(16) and W. Va. Code R. § 11-1A-12.1.aa; W. Va. Code § 30-3-14(c)(17) and W. Va. Code R. §§ 11-1A-12.1.e, 12.1.j, 12.2.d. and/or 12.1.x.

24. The Board alleged in Count 9 of the CNOH that Dr. Hess engaged in gross negligence in the use and control of prescription forms by preparing pre-signed and undated prescriptions for controlled substances and/or failing to secure blank prescription pads within his medical office, in violation of W. Va. Code § 30-3-14(c)(19), W. Va. Code R. § 11-1A-12.1.cc and/or 21 CFR § 1306.05(a).

25. Dr. Hess disputes and denies each and every allegation of professional misconduct and the alleged facts surrounding and supporting the alleged professional misconduct set forth in Count 8 and Count 9 of the CNOH.

26. The Board and Dr. Hess voluntarily enter into this Consent Order to effectuate the permanent voluntary surrender of his West Virginia medical license, and to resolve Complaint Nos. 18-145-W, 19-15-W and 19-27-W, and the pending administrative proceedings associated with the Board's CNOH in this matter.

CONCLUSIONS OF LAW

The Board and Dr. Hess stipulate to the following conclusions of law:

1. Dr. Hess' license to practice medicine and surgery in the State of West Virginia is subject to regulation and discipline by the West Virginia Board of Medicine, the "regulatory and disciplinary body for the practice of medicine and surgery" for physicians, podiatrists and physician assistants in West Virginia. W. Va. Code §§ 30-3-5 and 30-3-7(a).

2. The Board has a mandate to ensure “a professional environment that encourages the delivery of quality medical services” to protect the public interest. W. Va. Code § 30-3-2.

3. The West Virginia Medical Practice Act sets forth conduct which may render an individual unqualified for licensure or subject to discipline or other restrictions upon licensure. W. Va. Code § 30-3-14.

4. Pursuant to W. Va. Code § 30-1-8(c), the Board has promulgated legislative rules that “delineate conduct, practices or acts which, in the judgment of the board, constitute professional negligence, a willful departure from accepted standards of professional conduct and/or which may render an individual unqualified or unfit for licensure, registration or other authorization to practice.” W. Va. Code R. § 11-1A-12.

5. While these claims have not yet been adjudicated, the Board determined that probable cause exists to institute formal disciplinary charges against Dr. Hess pursuant to:

- a. W. Va. Code § 30-3-14(c)(8) and W. Va. Code R. § 11-1A-12.1.r;
- b. W. Va. Code § 30-3-14(c)(17) and W. Va. Code R. §§ 11-1A-12.1.e, 12.1.j and 12.2.d;
- c. W. Va. Code § 30-3-14(c)(17), and W. Va. Code R. § 11-1A-12.1.x;
- d. W. Va. Code § 30-3-14(c)(17) and W. Va. Code R. § 11-5-11, including but not limited to the rules set forth in W. Va. Code R. §§ 11-5-5.6, 11-5-5.8, 11-5-6.4, 11-5-6.6, 11-5-7.1, 11-5-9 and 11-5-11;
- e. W. Va. Code § 30-3-14(c)(16) and W. Va. Code R. § 11-12.1.aa; and
- f. W. Va. Code § 30-3-14(c)(19), W. Va. Code R. § 11-1A-12.1.cc, 21 CFR § 1306.05(a), W. Va. Code R. § 11-1A-12.1.cc and/or W. Va. Code R. § 11-1A-12.1.bb.

6. Dr. Hess admits the violations of professional conduct set forth in Counts 1 through 6 of the CNOH.

7. Dr. Hess disputes and denies the violations of professional conduct alleged in Counts 7, 8 and 9 of the CNOH and the alleged facts supporting the alleged violations of unprofessional misconduct. Dr. Hess' voluntary surrender of his West Virginia medical license in lieu of proceeding to an administrative hearing does not constitute an admission of guilt or liability with respect to Counts 7, 8 and 9 of the CNOH.

8. It is reasonable, appropriate, and in the public interest to permit Dr. Hess to surrender his West Virginia medical license in lieu of convening disciplinary proceedings upon Complaint Nos. 18-145-W, 19-15-W and 19-27-W.

CONSENT

By signing his name to this Consent Order, David Elwood Hess, MD, acknowledges that he understands and agrees with the following:

1. Dr. Hess has read and understands this entire Consent Order;
2. Dr. Hess agrees that he has been given adequate time and opportunity to review and consider the terms set forth in this Consent Order;
3. Dr. Hess understands that he has the right to legal representation in these matters, at his own expense, and agrees that he has been afforded adequate time and opportunity to exercise his right to consult with his attorneys regarding the legal effect of this Consent Order;
4. Dr. Hess understands that this Consent Order is a legally binding Order of the West Virginia Board of Medicine that affects his rights and privileges;

5. Dr. Hess acknowledges that he is fully aware that, without his consent, no permanent legal action may be taken against him except after a hearing held in accordance with West Virginia Code §§ 30-3-14(h) and 29A-5-1, *et seq.*;

6. Dr. Hess is aware of his legal rights in this matter, in addition to his right to be represented by counsel at his own expense, including: the right to a formal hearing, after reasonable notice, before the West Virginia Board of Medicine on the disciplinary charges before the Board; the right to confront and cross-examine witnesses against him; the right to present evidence and testify on his own behalf; the right to the issuance of subpoenas to compel the attendance of witnesses and the production of documents; the right to appeal under Chapter 29A of the West Virginia Code in the event of a final order or decision adverse to him;

7. Except for his right to legal counsel, which Dr. Hess has exercised, Dr. Hess knowingly and voluntarily waives all such additional legal rights, and agrees to the entry of this Consent Order relative to his practice of medicine in the State of West Virginia; and

8. Dr. Hess acknowledges that by signing this Consent Order, he is forever relinquishing his license to practice medicine and surgery in West Virginia, and will not be eligible for reinstatement or reactivation in the future; and

9. Dr. Hess understands that this Order is a public document which will be available for public inspection, will be accessible through the Board's website, and will be a permanent part of his historical file with the Board. Matters contained herein will be reported to the National Practitioner Data Bank, and may be reported to other jurisdictions, the Federation of State Medical Boards and as otherwise required by law.

ORDER

WHEREFORE, on the basis of the foregoing stipulated Findings of Fact and Conclusions of Law, and with the consent of Dr. Hess, the West Virginia Board of Medicine hereby **ORDERS** as follows:

1. Effective **April 13, 2023**, Dr. Hess' license to practice medicine and surgery in West Virginia, License No. 17552, is hereby **PERMANENTLY SURRENDERED** to the Board.

2. Effectively immediately upon the entry of this Consent Order, Dr. Hess' West Virginia Board of Medicine Controlled Substance Dispensing Practitioner Registration, Registration No. 1381, is **PERMANENTLY SURRENDERED** to the Board.

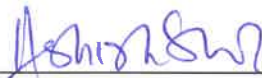
3. Immediately upon affixing his signature to this Consent Order, Dr. Hess shall commence a wind down of his practice until the effective date of his licensure surrender to the Board. During the wind-down period, Dr. Hess:

- a. Shall not accept any new patients;
- b. Shall not prescribe any controlled substance medication to any new patient or any current patient for whom he has not previously prescribed a controlled substance medication;
- c. Shall not prescribe any controlled substance medication to any current patient for whom Dr. Hess has not prescribed a controlled substance medication within the last ninety (90) days;
- d. Shall not administer or dispense any controlled substance medications to patients, nor shall he permit any employees, individuals or other practitioners in his Bridgeport office to administer or dispense controlled substance medications to patients;

- e. Shall notify all patients he is currently treating of the surrender of his medical license and the effective date thereof;
 - f. Shall engage in appropriate efforts to effectuate the safe and medically appropriate titration of controlled substance medications for his current patients and/or transfer of such patients to another practitioner.
4. In the future, Dr. Hess shall not submit any application or request seeking:
- a. the reinstatement or reactivation of his surrendered West Virginia medical license;
 - b. or any other practice credential which would permit Dr. Hess to practice medicine to West Virginia patients.
5. Dr. Hess agrees that he is permanently ineligible for licensure and/or any other practice credential issued by the West Virginia Board of Medicine, and that the Board need not consider or act upon any future application he may submit to this Board in contravention of the terms of this Consent Order.
6. This Consent Order shall be deemed entered on the date that this Order, with all required signatures affixed hereupon, is received in the Board's 101 Dee Drive, Charleston, West Virginia, office. The Executive Director of the West Virginia Board of Medicine is hereby authorized to denote the date of entry on behalf of the Board in accordance with this paragraph.

ENTERED ON: March 13, 2023

WEST VIRGINIA BOARD OF MEDICINE



Ashish P. Sheth, MD
President

Date: 3/13/23



Matthew Q. Christiansen, MD, MPH
Secretary

Date: 3/13/2023


ACCEPTANCE

I, DAVID ELWOOD HESS, MD, HAVE READ AND UNDERSTAND THE FOREGOING CONSENT ORDER. I HAVE BEEN GIVEN SUFFICIENT TIME AND OPPORTUNITY TO CONSIDER THIS CONSENT ORDER, AND I UNDERSTAND THE EFFECT IT WILL HAVE UPON MY LICENSE TO PRACTICE MEDICINE AND SURGERY IN WEST VIRGINIA. EFFECTIVE APRIL 13, 2023, MY WEST VIRGINIA LICENSE WILL BE SURRENDERED PERMANENTLY, AND I WILL NO LONGER BE ELIGIBLE TO PRACTICE MEDICINE AND SURGERY IN WEST VIRGINIA.

BY SIGNING THIS CONSENT ORDER, I HAVE WAIVED CERTAIN RIGHTS, BUT I DO SO KNOWINGLY AND VOLUNTARILY, AND I DO NOT WISH TO ASSERT THOSE RIGHTS IN THIS MATTER.

I UNDERSTAND THAT I HAVE THE RIGHT TO LEGAL COUNSEL, WHICH I HAVE EXERCISED. I HAVE BEEN PROVIDED WITH AMPLE TIME TO CONSULT WITH MY ATTORNEY AND OBTAIN LEGAL ADVICE REGARDING MY ACCEPTANCE OF THIS CONSENT ORDER.

I AM SIGNING THIS CONSENT ORDER VOLUNTARILY, AND I UNDERSTAND THE POTENTIAL CONSEQUENCES OF THIS CONSENT ORDER, AND ANY VIOLATIONS THEREOF.


David Elwood Hess, MD

Date:

2/24/2023

STATE OF

West Virginia

COUNTY OF

Harrison

, to-wit:

I,

Melissa D. Wolfe

, a Notary Public for said county and state do hereby certify that David Elwood Hess, MD, whose name is signed herein above has this day acknowledged the same before me.

Given under my hand this 24th day of February, 2023.

My Commission expires

April 9, 2024




Notary Public

BEFORE THE WEST VIRGINIA BOARD OF MEDICINE

WEST VIRGINIA BOARD OF MEDICINE,

Petitioner,

v.

**Complaint Nos. 18-145-W
 19-15-W
 19-27-W**

DAVID ELWOOD HESS, MD

Respondent.

**COMPLAINT, NOTICE OF HEARING, PRE-HEARING
DIRECTIVES AND PROTECTIVE ORDER**

NOW COMES the Petitioner, the West Virginia Board of Medicine (“Board” or “Petitioner”), and states that it has determined that probable cause exists to institute disciplinary proceedings against David Elwood Hess, MD (“Dr. Hess” or “Respondent”), for violations of the professional conduct standards set forth in the West Virginia Medical Practice Act, West Virginia Code § 30-3-1 *et seq.*, and the Board’s legislative rules. For its Complaint setting forth the charges against Dr. Hess, the Board states as follows:

1. The Board is the state agency which licenses, regulates and disciplines medical doctors in West Virginia.
2. Dr. Hess’ license to practice medicine and surgery in the State of West Virginia is subject to regulation and discipline by the Board.
3. The Board has jurisdiction over the subject matter of this Complaint.
4. As of the filing of this Complaint, Dr. Hess holds an active status license, License No. 17552, to practice medicine and surgery in the state of West Virginia.



5. Dr. Hess' West Virginia medical license was first issued on November 8, 1993.
6. Dr. Hess' self-identified medical area of specialty is family practice.
7. Dr. Hess is registered with the Board as a Controlled Substance Dispensing Practitioner, registration No. 1381, to dispense controlled substances to patients from his office-based practice location at 215 West Main Street in Bridgeport, West Virginia (the "Bridgeport Office").
8. Dr. Hess was previously disciplined by the Board pursuant to a Consent Order entered on October 26, 2009 in Complaint No. 08-155-W (the "2009 Consent Order"). Pursuant to the 2009 Consent Order, the Board determined that probable cause existed to substantiate charges of professional misconduct against Dr. Hess for gross negligence in the use and control of prescription forms, pre-signing blank prescriptions forms and unprofessional conduct.¹
9. Under the 2009 Consent Order, Dr. Hess was publicly reprimanded, placed on probation for a period of five (5) years, fined \$1,000.00, and ordered to complete twenty (20) hours of continuing medical education in the subject of office management practices. Further, during his period of probation, Dr. Hess was prohibited from employing any physician extender with prescriptive authority.
10. Dr. Hess completed his five-year probationary period on October 26, 2014.
11. This Complaint and Notice of Hearing relates to three separate complaints against Dr. Hess, identified as Initiated Complaint No. 18-145-W, Initiated Complaint No. 19-15-W and

¹ The 2009 Consent Order was based upon allegations that Dr. Hess had pre-signed an entire pad of blank prescriptions, which his former physician assistant then utilized to fraudulently obtain controlled substances.

Initiated Complaint No. 19-27-W. Each of the complaints were initiated by the Board's Complaint Committee.

12. At all times relevant to Initiated Complaint Nos. 18-145-W, 19-15-W and 19-27-W, Dr. Hess practiced medicine at his Bridgeport Office.

Complaint No. 18-145-W

13. It is unprofessional and unethical for a physician to engage in behaviors or actions of a sexual nature with a patient.

14. The physician-patient relationship is foundationally based on the patient's expectation and right that the physician would act unilaterally in the patient's best interest. Any sexual misconduct or sexual actions exploit the physician-patient relationship and leverage unequal physician power and dominance of the relationship, and thereby prevent professional and appropriate clinical care. Such interactions detract from the goals of the physician-patient relationship and may exploit the vulnerability of the patient, compromise the physician's ability to make objective judgments about the patient's health care, and ultimately be detrimental to the patient's well-being.

15. A patient cannot give meaningful consent to sexual contact or behavior with his or her physician due to the position of trust and disparity of power in the physician-patient relationship.

16. Professional interactions and judgment involving the prescribing of medications, particularly controlled substance medications, are further conflated by unprofessional interactions and sexual misconduct by a physician. When sexual relationships or actions between a physician

and patient develop during a patient's clinical care, the prescribing of controlled substances has the potential to substantially increase the magnitude of potential exploitation of patients.

17. On September 9, 2018, the Complaint Committee authorized Initiated Complaint No. 18-145-W against Dr. Hess, based upon information received that Dr. Hess had engaged in inappropriate sexual relationships with multiple female nurses who were patients of Dr. Hess, and for whom he prescribed controlled substance medications as part of a course of treatment.

18. The Board's investigation into Initiated Complaint 18-145-W substantiated that Dr. Hess engaged in professional sexual misconduct by having sexual and/or romantic relationships with three female patients, referred to herein as Patients A.G., B.C. and B.P., while also prescribing controlled substance medications to each patient.

Patient A.G.

19. Patient A.G. is a nurse that became professionally acquainted with Dr. Hess while working at a nursing home located in Bridgeport, West Virginia, where Dr. Hess was a provider.

20. In 2016, Patient A.G. established herself as a patient with Dr. Hess at his Bridgeport Office. Dr. Hess' medical care for Patient A.G. included treatment for migraines, depression and weight loss for over four years.

21. As part of a course of treatment, Dr. Hess regularly issued prescriptions for phentermine to Patient A.G.

22. Phentermine is a Schedule IV controlled substance medication under West Virginia and federal law that is prescribed to promote weight loss.

23. Shortly after Patient A.G. became his patient, Dr. Hess began a sexual relationship with Patient A.G.

24. Dr. Hess' sexual relationship with Patient A.G. lasted for approximately three years, during which time Dr. Hess and Patient A.G. engaged in sexual encounters on a near weekly basis. These sexual encounters typically occurred at Dr. Hess' home.

25. Dr. Hess also regularly engaged in inappropriate communications of a sexual nature with Patient A.G. while she was his patient, which included exchanging videos and photographs via text message or through social media applications such as Snapchat.

26. Throughout Dr. Hess' sexual relationship with Patient A.G., Dr. Hess continued to medically treat Patient A.G., including issuing prescriptions for phentermine to Patient A.G.

27. Dr. Hess' sexual relationship with Patient A.G. ceased in or about August 2019, after which Patient A.G. remained a patient of Dr. Hess.

28. Dr. Hess' personal and professional relationship with Patient A.G. was unethical, unprofessional and/or a violation of the physician-patient relationship.

29. Dr. Hess' sexual relationship with Patient A.G. violates the professional conduct standards and medical ethics for physicians and constitutes professional sexual misconduct.

Patient B.C.

30. Patient B.C. is a nurse that became professionally acquainted with Dr. Hess while working at a nursing home² located in Bridgeport, West Virginia, where Dr. Hess was a provider.

31. In or about July 2018, Patient B.C. established as a patient with Dr. Hess at his Bridgeport office. Dr. Hess' medical care for Patient B.C. included treatment over the course of three years for weight loss and attention deficient disorder. As part of his course of treatment, Dr. Hess regularly issued prescriptions to Patient B.C. for Adderall, a Schedule II controlled substance.

² Patient B.C. worked with Dr. Hess at a different nursing home than Patient A.G.

32. Shortly after Patient B.C. became his patient, Dr. Hess began a sexual relationship with Patient B.C.

33. Dr. Hess' sexual relationship with Patient B.C. lasted for approximately one year, during which time Dr. Hess and Patient B.C. engaged in sexual encounters on a weekly or monthly basis. These sexual encounters typically occurred at Dr. Hess' home.

34. Dr. Hess also engaged in inappropriate communications of a sexual nature with Patient B.C. while she was his patient, which included exchanging sexually explicit photographs via text message or through social media applications such as Snapchat.

35. Throughout Dr. Hess' sexual relationship with Patient B.C., Patient B.C. continued to be a patient of Dr. Hess, and Dr. Hess regularly issued prescriptions for Adderall to Patient B.C.

36. Dr. Hess' sexual relationship with Patient B.C. ceased in or about October 2019, after which Patient B.C. remained a patient of Dr. Hess.

37. Dr. Hess' personal and professional relationship with Patient B.C. was unethical, unprofessional and/or a violation of the physician-patient relationship.

38. Dr. Hess' sexual relationship with Patient B.C. violates the professional conduct standards and medical ethics for physicians and constitutes professional sexual misconduct.

Patient B.P.

39. Patient B.P. is a nurse. She was briefly employed by Dr. Hess at his Bridgeport Office for two months in 2017.

40. Patient B.P. was a patient of Dr. Hess from approximately 2016 until 2018.

41. Dr. Hess' medical care for Patient B.P. included treatment for weight loss and attention deficient disorder. As part of a course of treatment, Dr. Hess regularly issued

prescriptions to Patient B.P. for amphetamines, a Schedule II controlled substance, and/or phentermine, a Schedule IV controlled substance.

42. While Patient B.P. was a patient of Dr. Hess, she was also his tenant, in that she rented a home from Dr. Hess in the Bridgeport, West Virginia area.

43. On one occasion, Dr. Hess threatened to terminate Patient B.P. as a patient due to a dispute over the payment of a utility bill at the rental property.

44. While she was a patient and tenant, Dr. Hess initiated a personal and/or romantic relationship with Patient B.P., which included going on dates and exchanging inappropriate text messages and/or photographs of a sexual nature.

45. Throughout their personal and professional relationship, Dr. Hess regularly issued prescriptions for amphetamines and/or phentermine to Patient B.P. on a monthly basis.

46. Dr. Hess' professional, romantic and financial entanglement with Patient B.P. was unethical, unprofessional and a violation of the physician-patient relationship.

47. Dr. Hess' romantic relationship with Patient B.P. violates the professional conduct standards and medical ethics for physicians and constitutes professional sexual misconduct.

Complaint No. 19-15-W

48. On January 13, 2019, the Complaint Committee authorized Initiated Complaint No. 19-15-W to investigate Dr. Hess' prescribing practices. Complaint No. 19-15-W was initiated based upon a report from the West Virginia Board of Pharmacy, through the Controlled Substances Monitoring Database Review Committee and Advisory Committee, which identified Dr. Hess as a practitioner that had prescribing patterns considered to be abnormal or unusual.

49. Opioids are pain medications such as hydrocodone, oxycodone, morphine and hydromorphone, which are Schedule II controlled substance medications under West Virginia state law and federal law.

50. Morphine milligram equivalent (“MME”) is a value assigned to opioids to represent potency relative to morphine. Opioid dosages greater than 90 MME/day increase the risks of opioid-related death from overdose.

51. Benzodiazepines are a class of drugs that act as tranquilizers and are commonly used in the treatment of anxiety and depression.

52. Benzodiazepines, which include Xanax, Klonopin, Ativan, Valium and Restoril, are Schedule IV Controlled Substances under West Virginia state law and federal law.

53. Benzodiazepines can significantly increase the risk of respiratory depression, particularly when taken in combination with opioids and/or sedatives.

54. Naloxone is an opioid antagonist used to rapidly reverse opioid overdose and should be discussed and/or prescribed to patients with an increased risk of opioid overdose.

55. The Complaint Committee conducted an investigation into Complaint No. 19-15-W, and obtained an independent physician review of patient medical records and prescribing records for sixteen of Dr. Hess’ patients, identified as Patients 1 through 16.

56. Many of Dr. Hess’ patients were prescribed Schedule II opioid medications in high doses well above 90 MME/day while in combination with benzodiazepines, and thus had an increased risk of opioid overdose.

57. The independent reviewer opined that Dr. Hess’ controlled substance prescribing practices violated the standard of care, particularly with respect to his prescribing of opioid and

benzodiazepine medications, both alone and in combination. Further, Dr. Hess failed to discuss and/or prescribe naloxone to patients who were at an increased risk of overdose due to the high dosages of controlled substance medications prescribed by Dr. Hess.

58. The independent reviewer further opined that Dr. Hess' medical records were very unorganized and often illegible.

59. Dr. Hess therefore engaged in professional misconduct by failing to practice medicine with that level of care, skill, and treatment which is recognized by a reasonable, prudent physician in the same or similar specialty as being acceptable under similar conditions and circumstances.

Complaint No. 19-27-W

Controlled Substance Dispensing Practices

60. Dr. Hess is registered with the Board as a drug dispensing practitioner, registration No. 1381, to dispense controlled substances to patients from his practice location. Dr. Hess' registered drug dispensing location is his Bridgeport Office located at 215 West Main Street in Bridgeport, West Virginia.

61. Dr. Hess is the only registered drug dispensing practitioner authorized to administer and/or dispense controlled substance medications at his Bridgeport Office.

62. As a registered controlled substance dispensing practitioner, Dr. Hess maintained an inventory of certain controlled substance medications at his Bridgeport Office, including vials of Meperidine (Demerol) vials.

63. Meperidine, i.e. Demerol, is a Schedule II controlled substance and narcotic pain medication. Dr. Hess maintained vials of Meperidine at his Bridgeport Office that were directly administered to patients by injection.

64. Drug dispensing practitioners are required to comply with all recordkeeping requirements applicable to the drugs administered and/or dispensed at their medical office. Controlled substance dispensing practitioners must maintain daily records that facilitate an audit trail for each day on which controlled substances are dispensed and/or administered at the office.

65. The dispensing and administration of medication to a patient must be a personal act of the drug dispensing practitioner. It is not within the bounds of professional medical conduct for a controlled substance dispensing practitioner to permit nonphysician staff to administer injections of Schedule II controlled substances to patients.

66. Prescription drugs must be stored in a locked or otherwise secure area to prevent access when the registered drug dispensing practitioner is not present in the office. To guard against theft and diversion, all controlled substance medications must be separately secured with the access code or key limited to the registered controlled substance dispensing practitioner.

67. Pursuant to W. Va. Code R. § 11-5-9 *et seq.*, an authorized representative of the Board may, without prior notice, enter a registered drug dispensing location to conduct an inspection and audit to verify compliance with the Board's rules for drug dispensing and/or to investigate an allegation or complaint with respect to a practitioner's dispensing practice.

68. On August 21, 2018, the Board conducted an inspection and audit of Dr. Hess' drug dispensing practice at his Bridgeport Office, which identified potential violations with respect to Dr. Hess' controlled substance dispensing and recordkeeping practices.

69. On January 13, 2019, and as a result of the inspection audit, the Complaint Committee authorized Initiated Complaint No. 19-27-W against Dr. Hess to further investigate Dr. Hess' controlled substance dispensing practices.

70. The Complaint Committee obtained an independent physician review of Dr. Hess' controlled substance dispensing policies and practices. The independent reviewer concluded that Dr. Hess violated the professional standards of physician practice and conduct with respect to his recordkeeping and dispensing/administration practices of Meperidine at his Bridgeport Office.

71. Specifically, Dr. Hess' recordkeeping, policies and practices with respect to the dispensing and/or administration of Meperidine, a Schedule II controlled substance, violated the Board's drug dispensing rule set forth in W. Va. Code R. § 11-5-1, *et. seq.*, as follows:

- a. Dr. Hess inappropriately permitted nonphysician staff members who were not registered as drug dispensing practitioners to administer Meperidine injections to patients at his Bridgeport Office, in violation of W. Va. Code R. §§ 11-5-5.8 and/or 11-5-7.1;
- b. Dr. Hess inappropriately permitted nonphysician staff members who were not registered as drug dispensing practitioners to have custody and access to controlled substance medications at his Bridgeport Office, in violation of W. Va. Code R. § 11-5-6.4;
- c. Dr. Hess failed to maintain adequate records with respect to controlled substance medications administered and/or dispensed at his Bridgeport Office, in violation of W. Va. Code R. §§ 11-5-5.6 and/or 11-5-9; and/or

- d. Dr. Hess failed to maintain adequate records with respect to his controlled substance medication inventory at his Bridgeport Office, in violation of W. Va. Code R. §§ 11-5-5.6 and/or 11-5-9.

Gross Negligence in Use and Control of Prescription Forms

72. On October 17, 2019, Board investigators conducted a follow-up inspection and audit of Dr. Hess' drug dispensing practice at his Bridgeport Office.

73. Pursuant to 21 C.F.R. § 1306.05(a), a prescription for a controlled substance must be signed and dated by the practitioner on the date the prescription is issued.

74. During the follow-up inspection, Board investigators observed a total of nine pre-signed and undated prescriptions issued by Dr. Hess for controlled substance medications to three separate patients.

75. Board investigators further observed two separate blank prescription pads registered to Dr. Hess that were not properly secured.

COUNT 1

(Patient A.G.)

**Exercising Influence Within a Patient-Physician Relationship
for the Purpose of Engaging a Patient in Sexual Activity**

76. The Board hereby reasserts and incorporates by reference all allegations set forth above as if fully set forth herein.

77. Dr. Hess exercised influence within the patient-physician relationship for the purpose of engaging Patient A.G. in sexual activity.

78. By exercising influence within the patient-physician relationship for the purpose of engaging Patient A.G. in sexual activity, Dr. Hess has violated the professional conduct standards for physicians set forth in W. Va. Code § 30-3-14(c)(8) and W. Va. Code R. § 11-1A-12.1.r, which is grounds for disciplinary action.

COUNT 2

(Patient A.G.)

Dishonorable, Unethical or Unprofessional Conduct

79. The Board hereby reasserts and incorporates by reference all allegations set forth above as if fully set forth herein.

80. Dr. Hess' personal and professional relationship with Patient A.G. was unethical, unprofessional and a violation of the physician-patient relationship.

81. Dr. Hess' sexual relationship with Patient A.G. constitutes professional sexual misconduct.

82. Dr. Hess' inappropriate relationship and conduct with Patient A.G. constitutes dishonorable, unethical and/or unprofessional conduct in violation of the following professional conduct standards set forth in the West Virginia Medical Practice Act and/or the Board's legislative rules:

- a. W. Va. Code § 30-3-14(c)(17) and W. Va. Code R. § 11-1A-12.1.e, related to engaging in dishonorable, unethical or unprofessional conduct of a character likely to deceive, defraud or harm the public or any member thereof; and/or
- b. W. Va. Code § 30-3-14(c)(17) and W. Va. Code R. § 11-1A-12.1.j, related to engaging in unprofessional conduct, including, but not limited to, any departure

from or failure to conform to, the standards of acceptable and prevailing medical practice or the ethics of the medical profession, irrespective of whether or not a patient is injured thereby; and/or

- c. W. Va. Code § 30-3-14(c)(17) and W. Va. Code R. § 11-1A-12.2.d, related to conduct which is calculated to bring or has the effect of bringing the medical profession into disrepute, including, but not limited to, any departure from or failure to conform to the standards of acceptable and prevailing medical or podiatric practice within the state, and any departure or failure to conform to the current principles of medical ethics of the AMA.

83. Dr. Hess' conduct has departed from, and failed to conform to, the standards of acceptable professional and ethical conduct and/or medical practice, which is grounds for disciplinary action pursuant to W. Va. Code § 30-3-14(c)(17) and W. Va. Code R. §§ 11-1A-12.1.e, 12.1.j, and/or 12.2.d.

COUNT 3

(Patient B.C.)

Exercising Influence Within a Patient-Physician Relationship for the Purpose of Engaging a Patient in Sexual Activity

84. The Board hereby reasserts and incorporates by reference all allegations set forth above as if fully set forth herein.

85. Dr. Hess exercised influence within the patient-physician relationship for the purpose of engaging Patient B.C. in sexual activity.

86. By exercising influence with the patient-physician relationship for the purpose of engaging Patient B.C. in sexual activity, Dr. Hess has violated the professional conduct standards

for physicians set forth in W. Va. Code § 30-3-14(c)(8) and W. Va. Code R. § 11-1A-12.1.r, which is grounds for disciplinary action.

COUNT 4

(Patient B.C.)

Dishonorable, Unethical or Unprofessional Conduct

87. The Board hereby reasserts and incorporates by reference all allegations set forth above as if fully set forth herein.

88. Dr. Hess' personal and professional relationship with Patient B.C. was unethical, unprofessional and a violation of the physician-patient relationship.

89. Dr. Hess' sexual relationship with Patient B.C. constitutes professional sexual misconduct.

90. Dr. Hess' inappropriate relationship and conduct with Patient B.C. constitutes dishonorable, unethical and/or unprofessional conduct in violation of the following professional conduct standards set forth in the West Virginia Medical Practice Act and/or the Board's legislative rules:

- a. W. Va. Code § 30-3-14(c)(17) and W. Va. Code R. § 11-1A-12.1.e, related to engaging in dishonorable, unethical or unprofessional conduct of a character likely to deceive, defraud or harm the public or any member thereof; and/or
- b. W. Va. Code § 30-3-14(c)(17) and W. Va. Code R. § 11-1A-12.1.j, related to engaging in unprofessional conduct, including, but not limited to, any departure from or failure to conform to, the standards of acceptable and prevailing medical practice or the ethics of the medical profession, irrespective of whether

or not a patient is injured thereby; and/or

- c. W. Va. Code § 30-3-14(c)(17) and W. Va. Code R. § 11-1A-12.2.d, related to conduct which is calculated to bring or has the effect of bringing the medical profession into disrepute, including, but not limited to, any departure from or failure to conform to the standards of acceptable and prevailing medical or podiatric practice within the state, and any departure or failure to conform to the current principles of medical ethics of the AMA.

91. Dr. Hess' conduct has departed from, and failed to conform to, the standards of acceptable professional and ethical conduct and/or medical practice, which is grounds for disciplinary action pursuant to W. Va. Code § 30-3-14(c)(17) and W. Va. Code R. §§ 11-1A-12.1.e, 12.1.j, and/or 12.2.d.

COUNT 5

(Patient B.P.)

Exercising Influence Within a Patient-Physician Relationship for the Purpose of Engaging a Patient in Sexual Activity

92. The Board hereby reasserts and incorporates by reference all allegations set forth above as if fully set forth herein.

93. Dr. Hess exercised influence within the patient-physician relationship for the purpose of engaging Patient B.P. in sexual activity.

94. By exercising influence with the patient-physician relationship for the purpose of engaging Patient B.P. in sexual activity, Dr. Hess has violated the professional conduct standards for physicians set forth in W. Va. Code § 30-3-14(c)(8) and W. Va. Code R. § 11-1A-12.1.r, which is grounds for disciplinary action.

COUNT 6

(Patient B.P.)

Dishonorable, Unethical or Unprofessional Conduct

95. The Board hereby reasserts and incorporates by reference all allegations set forth above as if fully set forth herein.

96. Dr. Hess' professional, romantic and financial entanglement with Patient B.P. was unethical, unprofessional and a violation of the physician-patient relationship.

97. Dr. Hess' romantic relationship with Patient B.P. constitutes professional sexual misconduct.

98. Dr. Hess' inappropriate relationship and conduct with Patient B.P. constitutes dishonorable, unethical and/or unprofessional conduct in violation of the following professional conduct standards set forth in the West Virginia Medical Practice Act and/or the Board's legislative rules:

- a. W. Va. Code § 30-3-14(c)(17) and W. Va. Code R. § 11-1A-12.1.e, related to engaging in dishonorable, unethical or unprofessional conduct of a character likely to deceive, defraud or harm the public or any member thereof; and/or
- b. W. Va. Code § 30-3-14(c)(17) and W. Va. Code R. § 11-1A-12.1.j, related to engaging in unprofessional conduct, including, but not limited to, any departure from or failure to conform to, the standards of acceptable and prevailing medical practice or the ethics of the medical profession, irrespective of whether or not a patient is injured thereby; and/or

- c. W. Va. Code § 30-3-14(c)(17) and W. Va. Code R. § 11-1A-12.2.d, related to conduct which is calculated to bring or has the effect of bringing the medical profession into disrepute, including, but not limited to, any departure from or failure to conform to the standards of acceptable and prevailing medical or podiatric practice within the state, and any departure or failure to conform to the current principles of medical ethics of the AMA.

99. Dr. Hess' conduct has departed from, and failed to conform to, the standards of acceptable professional and ethical conduct and/or medical practice, which is grounds for disciplinary action pursuant to W. Va. Code § 30-3-14(c)(17) and W. Va. Code R. §§ 11-1A-12.1.e, 12.1.j, and/or 12.2.d.

COUNT 7

Failure to Practice Medicine With That Level of Care, Skill and Treatment Which is Recognized by a Reasonable, Prudent, Physician Engaged in the Same or a Similar Specialty as Being Acceptable Under Similar Conditions and Circumstances

100. The Board hereby reasserts and incorporates by reference all allegations asserted above as if fully set forth herein.

101. With respect to Patients 1 through 16, whose medical records were reviewed by the independent consultant retained by the Board in Complaint No. 19-15-W, Dr. Hess engaged in professional misconduct by failing to practice medicine with that level of care, skill, and treatment which is recognized by a reasonable, prudent physician in the same or similar specialty as being acceptable under similar conditions and circumstances.

102. By failing to practice medicine with that level of care, skill and treatment which is recognized by a reasonable, prudent physician engaged in the same or similar specialty as being

acceptable under similar conditions and circumstances, Dr. Hess as departed from, and failed to conform to, the standards of acceptable and prevailing medical practice, which is grounds for disciplinary action pursuant to W. Va. Code § 30-3-14(c)(17) and W. Va. Code R. § 11-1A-12.1.x.

COUNT 8

Violations of Drug Dispensing Rule

103. The Board hereby reasserts and incorporates by reference all allegations asserted above as if fully set forth herein.

104. Based upon the audit and investigation of Dr. Hess' policies and practices with respect to his dispensing of controlled substances at his Bridgeport Office, Dr. Hess violated the Board's drug dispensing rule set forth in W. Va. Code R. § 11-5-1, et. seq., as follows:

- a. Dr. Hess improperly permitted nonphysician staff members who were not registered as drug dispensing practitioners to administer Meperidine injections, a Schedule II controlled substance, to patients at his Bridgeport Office, in violation of W. Va. Code R. §§ 11-5-5.8 and/or 11-5-7.1;
- b. Dr. Hess inappropriately permitted nonphysician staff members who were not registered as drug dispensing practitioners to have custody and access to controlled substance medications at his Bridgeport Office, in violation of W. Va. Code R. § 11-5-6.4;
- c. Dr. Hess failed to maintain adequate records with respect to controlled substance medications administered and/or dispensed at his Bridgeport Office, in violation of W. Va. Code R. §§ 11-5-5.6 and/or 11-5-9; and/or

- d. Dr. Hess failed to maintain adequate records with respect to his controlled substance medication inventory at his Bridgeport Office, in violation of W. Va. Code R. §§ 11-5-5.6 and/or 11-5-9.

105. Dr. Hess' violations of the drug dispensing rules as set forth above constitute unprofessional conduct, which is grounds for disciplinary action pursuant to W. Va. Code R. § 11-5-11 and W. Va. Code § 30-3-14(c)(17).

106. Further, by permitting nonphysician medical office staff to administer injections of Meperidine, a Schedule II narcotic medication, Dr. Hess' conduct failed to conform to the standards of acceptable professional and ethical conduct and/or medical practice, which is grounds for disciplinary action pursuant to W. Va. Code § 30-3-14(c)(16) and W. Va. Code R. § 11-1A-12.1.aa; W. Va. Code § 30-3-14(c)(17) and W. Va. Code R. §§ 11-1A-12.1.e, 12.1.j, 12.2.d. and/or 12.1.x.

COUNT 9

Pre-signing Undated Prescriptions; Gross Negligence in Use and Control of Prescription Forms

107. The Board hereby reasserts and incorporates by reference all allegations set forth above as if fully set forth herein.

108. By preparing pre-signed undated prescriptions for controlled substances and/or by failing to secure his blank prescription pads within his medical office, Dr. Hess engaged in gross negligence in the use and control of prescription forms in violation of W. Va. Code § 30-3-14(c)(19), W. Va. Code R. § 11-1A-12.1.cc and/or 21 CFR § 1306.05(a).

109. Dr. Hess' gross negligence in the use and control of prescription forms is grounds for disciplinary action pursuant to W. Va. Code § 30-3-14(c)(19) and/or W. Va. Code § 30-3-14(c)(17) and W. Va. Code R. § 11-1A-12.1.cc and/or W. Va. Code R. § 11-1A-12.1.bb.

NOTICE OF HEARING

ACCORDINGLY, the Respondent, David Elwood Hess, MD, is hereby notified that a hearing will convene, beginning at **9:30 a.m. on April 20, 21 and 22, 2022**, and if necessary, shall continue thereafter day to day until completed as directed and scheduled by the duly appointed hearing examiner. The hearing shall convene in the offices of the West Virginia Board of Medicine, 101 Dee Drive, Suite 103, Charleston, West Virginia 25311.

The purpose of the hearing will be to determine whether disciplinary action should be taken by the Petitioner Board against Respondent's license to practice medicine and surgery in West Virginia. Dr. Hess must be present in person at the hearing and may be accompanied by an attorney if he desires. He may present witnesses and other evidence on his behalf at the hearing in accordance with West Virginia Code § 30-3-14(h) and West Virginia Code § 29A-5-1 *et seq.*

SELECTION OF HEARING EXAMINER, RESPONDENT'S ANSWER, PREHEARING MANDATORY DISCLOSURES AND PROTECTIVE ORDER

Within fifteen (15) days of receipt of this Complaint and Notice of Hearing, the Respondent, Dr. Hess, shall in writing select as Hearing Examiner either **J. Rudy Martin, Esq.**, or **Jennifer N. Taylor, Esq.**, to preside at and conduct the proceedings. In the event that Respondent fails to make a timely selection, final selection will be made by the Board. Once a

final selection has been made the Board shall notify the designated hearing examiner, in writing, and provide him/her with a copy of the Complaint and Notice of Hearing.


Respondent shall serve an Answer to this Complaint and Notice of Hearing on the Petitioner Board within thirty (30) days of service upon him. If he fails to serve an Answer on the Petitioner within this period, Petitioner is entitled, pursuant to W. Va. Code R. § 11-3-11.5.s, to take all the allegations set forth herein as confessed by Dr. Hess.

The Petitioner and the Respondent shall submit prehearing mandatory disclosures in accord with W. Va. Code § 30-3-14(i). All patient medical records, prescription records, peer review material, and records which contain personally identifiable information of the Respondent or third parties and which are subject to production by the Petitioner or the Respondent pursuant to W. Va. Code § 30-3-14(i) are deemed to be confidential and shall be exchanged under seal and pursuant to the **Protective Order** of this Board. The producing party shall identify and designate all confidential material which is produced under seal. Petitioner and Respondent shall maintain all such material in a confidential manner. Notwithstanding this Protective Order, the parties may disclose these records to legal counsel, expert witnesses and other individuals who are participating or assisting in the litigation of this matter so long as such persons: are advised that the documents are subject to protective order and must be maintained in a confidential manner; and agree to maintain the confidentiality of the protected material. Nothing in this Order shall prohibit disclosure of the protected material in response to an Order from a court of competent jurisdiction or as otherwise required by law.

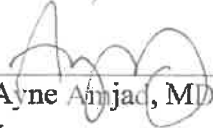
In compliance with W. Va. Code § 30-3-8, the Secretary of the Board shall “together with the president of the board sign all licenses, reports, orders and other documents that may be

required by the board in the performance of its duties," the signatures of the current Board President and Secretary appear hereupon below.

WEST VIRGINIA BOARD OF MEDICINE


Kishore K. Challa, MD, FACC
President


Date


Quartel-Ayne Amjad, MD, MPH
Secretary


Date