STATE OF MARYLAND

DHMH Board of Physicians

Maryland Department of Health and Mental Hygiene
4201 Patterson Avenue • Baltimore, Maryland 21215-2299
Martin O' Malley, Governor – Anthony G. Brown, Lt. Governor – John M. Colmers, Secretary

July 27, 2010

BY REGULAR AND CERTIFIED MAIL
CERTIFIED MAIL NO.: 7009 2820 0001 0944 2657

Mehrdad Aalai, M.D.
10524 Democracy Boulevard
Potomac, Maryland 20854

Re: Notice of Charges and CRC Under
The Maryland Medical Practice Act
License Number: D26712
Case Number: 2008-0347

Dear Dr. Aalai:

By the enclosed "Charges under the Maryland Medical Practice Act (the "Charges"), the Maryland State Board of Physicians (the "Board") charges you under the Maryland Medical Practice Act (the "Act"), Md. Health Occ. Ann. § 14-404. Pursuant to § 14-411(g) of the Act, the enclosed charges are **PUBLIC** documents. If the Board finds you have violated any of the disciplinary grounds, the Board may reprimand you, place you on probation, or suspend or revoke your license, or impose a monetary penalty.

This letter is your notice that a Case Resolution Conference ("CRC") has been scheduled before a panel of the Board for Wednesday, December 1, 2010 at 10:00 a.m., at the Board's office, 4201 Patterson Avenue, Baltimore, Maryland 21215. The Administrative Prosecutor who will present the case against you is Dawn L. Rubin, Assistant Attorney General. Because your right to practice medicine in the State of Maryland is at issue, you are strongly urged to retain and be represented by an attorney at all stages of this proceeding. If you choose to retain counsel, please be advised that in order to represent you at any proceedings in this case, your attorney must be either admitted to the Maryland bar or specially admitted to practice law in Maryland under Rule 14 of the rules governing admission to the bar found in Volume II of the Maryland Rules of Procedure.

The purpose of the CRC is to determine whether a reasonable opportunity exists for resolution of your case prior to hearing. The CRC procedure is attached for your information.

The CRC is not mandatory and will not take place unless you confirm your attendance **in writing within ten (10) days** of service of the charging document to:

Barbara K. Vona, Chief, Compliance Administration
Maryland Board of Physicians
4201 Patterson Avenue, 4th Floor
Baltimore, Maryland 21215
(410) 767-4771
Fax Number: (410) 358-2252

This letter should be copied to the Administrative Prosecutor:

Dawn L. Rubin, Assistant Attorney General
Office of the Attorney General – DHMH
300 West Preston Street, Suite 207
Baltimore, Maryland 21201
(410) 767-1874
Fax Number: (410) 333-5831

If you elect to proceed with the CRC, either you or your attorney is strongly urged to contact the Administrative Prosecutor prior to the CRC to discuss your case. The CRC is without prejudice to the Administrative Prosecutor or to you. That is, the Board representatives who attend the CRC will not be able to discuss what you said at the CRC at any other stages of this proceeding unless those facts are admitted into evidence at a hearing.

If you elect not to proceed with or if this matter is not resolved at the CRC, a prehearing conference and a hearing will be scheduled and you will be notified of the dates.

If this matter is not resolved on terms approved by the Board, you have the right to an evidentiary hearing on the charges before an Administrative Law Judge. The Administrative Law Judge will conduct the hearing in accordance with the Administrative Procedure Act, Md. State Gov't Code Ann. §§ 10-201 *et seq.* The Administrative Law Judge will submit proposed findings to the Board for the Board's disposition. If the proposed findings are adverse to you, you will be given an opportunity to file written exceptions and present oral argument to the Board before the Board reaches a final decision.

At the hearing you have the following rights: to be represented by counsel, to subpoena witnesses, to call witnesses on your own behalf, to present evidence, to cross-examine witnesses, to testify, and to present summation and argument. You must make a written request for witness subpoenas in advance of the hearing and you must pay the court subpoena cost of five dollars ($5.00) per subpoena. You may petition the Office of Administrative Hearings to waive the subpoena fee, if you are unable to pay the fee. In the event that you need any special accommodations at the hearing, please notify the court at least five days prior to the pre-hearing and/or hearing. You may reach the clerk's office at the Office of Administrative Hearings at (410) 229-4294. You may request a copy of the hearing procedures from the Administrative Prosecutor at no cost.

Please be advised that when a prehearing conference and a hearing are scheduled and you do not attend or participate, the Administrative Law Judge may enter a proposed default order against you, or hear the case and issue a proposed decision despite your absence.

Production of the Board's documents related to a charged case is governed by the Board's discovery regulations found at Code Md. Regs. tit 10, §32.02.03E. Additionally, you or your attorney may contact the Administrative Prosecutor to discuss review of the Board's investigative file.

If you or your attorney has any questions about the charges, please contact the Administrative Prosecutor at (410) 767-1874.

Very truly yours,

John T. Papavasiliou
Deputy Director
Maryland State Board of Physicians

Enclosures

cc: John S. Nugent, Deputy Counsel
Barbara K. Vona, Chief, Compliance Administration
Yemisi Koya, Chief, Investigation
Rosalind M. Spellman, Administrative Officer
Dawn L. Rubin, Assistant Attorney General, Administrative Prosecutor
Victoria McIntyre, Compliance Analyst

MARYLAND BOARD OF PHYSICIANS
CASE RESOLUTION CONFERENCE INFORMATION

PURPOSE

The Case Resolution Conference ("CRC") is voluntary. The proceedings are informal and are intended to encourage candid and succinct discussion of the case. The purpose of the CRC is to explore the possibility of developing a consent order or otherwise resolving the case without a formal hearing.

PARTICIPANTS

The Maryland Board of Physicians (the "Board") has a designated CRC committee comprised of a panel of the Board. Board Counsel and other Board staff also attend the committee meeting.

As the Letter of Procedure indicates, the Board has tentatively scheduled a CRC in this case. The CRC is not mandatory and will not take place unless the Respondent confirms his/her attendance in writing within ten (10) days of receipt of the Charging Document. **IF THE RESPONDENT CONFIRMS HER ATTENDANCE, THE RESPONDENT, THE RESPONDENT'S ATTORNEY, AND THE ADMINISTRATIVE PROSECUTOR ARE REQUIRED TO ATTEND.** Respondents who do not practice within the State of Maryland may inquire about alternatives to personal attendance.

PROCEDURE

The Respondent's attorney and the Administrative Prosecutor should communicate prior to the CRC. If possible, a proposed consent order should be drafted for presentation at the CRC. The attorneys will be expected to present a brief outline of their respective cases and proffer their agreement for resolution of the case at the CRC. A dialogue will ensue. The CRC members and Board staff will then consult outside the presence of the parties. The parties will return to the CRC and will be informed if the CRC members believe that the Board would accept a proposed resolution of the charges in this case.

The CRC will outline the terms of an acceptable consent order that the CRC will recommend to the Board. The consent order shall be prepared by the parties and include Findings of Fact and Conclusions of Law for review and approval by Board Counsel. The CRC members will indicate when the consent order must be submitted for the Board's approval. The failure to finalize the terms of the consent order within the specified time period will result in the hearing proceeding as originally scheduled or on an expedited schedule if the original hearing date had been postponed.

The Respondent's attorney shall send the consent order signed by the Respondent to the Administrative Prosecutor who shall transmit the consent order to the Board and Board Counsel. Acceptance of a proposed consent order requires an affirmative vote of a majority of the quorum of

the Maryland Board of Physicians. After the Board executes the consent order, conformed copies will then be served on the parties.

If, at the time of the CRC, the parties and the CRC members do not agree upon a resolution of the charges, the prehearing conference and hearing will proceed as scheduled.

The CRC is without prejudice to the Administrative Prosecutor or to the Respondent.

IN THE MATTER OF	*	**BEFORE THE MARYLAND**
Mehrdad Aalai, M.D.	*	**STATE BOARD OF**
Respondent	*	**PHYSICIANS**
License Number: D26712	*	**Case Number: 2008-0347**

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CHARGES UNDER THE MARYLAND MEDICAL PRACTICE ACT

The Maryland State Board of Physicians (the "Board"), hereby charges Mehrdad Aalai, M.D. (the "Respondent") (D.O.B. 10/08/1938), License Number D26712, under the Maryland Medical Practice Act (the "Act"), Md. Health Occ. Code Ann. ("Health Occ.") § 14-404(a) (2009 Repl. Vol.).

The pertinent provisions of the Act provide the following:

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

(3) Is guilty of:
(i) Immoral conduct in the practice of medicine; or
(ii) Unprofessional conduct in the practice of medicine;

(6) Abandons a patient;

(22) Fails to meet appropriate standards as determined by appropriate peer review for the delivery of quality medical and surgical care performed in an outpatient surgical facility, office, hospital, or any other location in this State;

(40) Fails to keep adequate medical records as determined by appropriate peer review.

ALLEGATIONS OF FACT[1]

I. BACKGROUND

The Board bases its charges on the following facts that the Board has cause to believe are true:

1. At all times relevant to these charges, the Respondent was and is a physician licensed to practice medicine in the State of Maryland. The Respondent was initially licensed in Maryland on or about July 29, 1981, and his license is presently active.[2] The Respondent's license expires on September 30, 2010.

2. At the time of the acts described herein, the Respondent was a physician engaged in the practice of Obstetrics and Gynecology at American Women's Services, 4700 Berwyn House Road, Suite 203, College Park, Maryland 20740. The Respondent does not presently hold hospital privileges.

3. On or about November 30, 2007, the Board received a complaint from an Emergency Room ("ER") physician at Potomac Hospital in Woodbridge, Virginia, alleging that in October 2007 Patient A[3] (a 29 year-old female) had presented to Potomac Hospital's ER following an incomplete abortion. The complaint further stated in part:

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[1] The allegations set forth in this document are intended to provide the Respondent with notice of the alleged charges. 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 these charges.

[2] The Board revoked the Respondent's license in December 1994 following a conviction for Medicaid fraud; he was reinstated in May 1996 with probation. In September 1997, the Board terminated the Respondent's probation.

[3] Patient names will not be used in this document in order to preserve confidentiality.

> ...The physician knowingly sent the patient to Virginia from Maryland following incomplete treatment of her [termination of pregnancy]. The patient and her family were traveling on I-95 from College Park to Carrsville, VA when she had heavy vaginal bleeding. They stopped at a gas station in Woodbridge and had [*sic*] a syncopal[4] episode. EMS was called and the patient was brought to Potomac Hospital. I evaluated the patient in the [ER]; she was hypotensive, her abdomen was extremely tender and her cervix was dilated 2 cm. with a large amount of blood clots. She was taken for an emergency D&C[5] and consented for blood transfusion.

4. On or about October 6, 2008, the Board notified the Respondent of its investigation, and requested that he provide a summary of the care and treatment of Patient A. Additionally, the Board subpoenaed Patient A's medical records.

5. During the course of the Board's investigation, the Board's staff conducted interviews of Patient A, her mother and the Respondent.

6. On or about May 28, 2009, the Board transmitted records and documents relating to Patient A to Maximus, a peer review organization, to conduct a formal peer review. Maximus assigned the peer review to two physicians board-certified in obstetrics and gynecology.

PATIENT-RELATED ALLEGATIONS

7. Patient A was a 29-year-old female on October 23, 2007, when she presented to American Women's Services (hereinafter, the "clinic") for a second trimester termination of pregnancy; this was her sixth pregnancy. She had given birth to three children (one delivery had been premature),

[4] Temporary loss of consciousness.
[5] Dilation and Curettage.

and had a history of two spontaneous abortions (miscarriages). Patient A was accompanied by her mother.

8. On October 23, 2007, Patient A signed several forms including a Consent for Laminaria Insertion;[6] a Consent for Misoprostol[7] Prior to Surgical Abortion; an Informed Consent Agreement for Non-Surgical Abortion after 14 Weeks; a Consent for Abortion; and a Consent for Conscious Sedation.

9. An Obstetrical Sonogram Report dated October 23, 2007 (initialed by an ultrasound technician and signed by the Respondent), indicated that Patient A was 21 weeks and 4 days pregnant.

10. According to Patient A[8] and documented by the Respondent in her clinic record, after the ultrasound, the Respondent inserted 9 Laminaria into Patient A's vagina to dilate her cervix. According to Patient A, a chaperone was not present during this procedure. Patient A's clinic records indicate that the Respondent prescribed 100 mg. of Doxycycline[9] twice daily to Patient A, with instructions to return the next day, October 24, 2007 at 12:00 p.m. Patient A recalled that she had been given four white pills in an envelope, and had been instructed to take two pills the next morning when she awoke, and two before her appointment. Patient A stated that she took the pills as instructed.

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[6] Kelp used in dilating the cervix.
[7] Also known as Cytotec, the "off label use" for this medication is soften the cervix prior to the abortion.
[8] Patient A's statements are referenced from her January 10, 2008 interview with the Board's staff.
[9] Doxycycline is an antibiotic.

11. Patient A and her mother stayed at a nearby hotel in Maryland and checked out the next afternoon on October 24, 2007 between 11:00 a.m. and 12:00 p.m., at which time they returned to the clinic. Patient A estimated she waited until some time between 5:00 p.m. and 6:00 p.m.,[10] to see the Respondent.

12. Patient A stated that the Respondent removed the Laminaria, and stated that she was not ready. The Respondent documented that he inserted 12 additional Laminaria into Patient A's vagina. The Respondent again prescribed Doxycycline (100 mg. twice daily) and 2 Cytotec (to be taken at 7:00 a.m.), with instructions for Patient A to return the following day, October 25, 2007, at 10:00 a.m.

13. Patient A and her mother stayed at the same hotel in Maryland where they had stayed the previous night.

14. According to Patient A, she and her mother returned to the clinic between 10:00 a.m. and 11:00 a.m. the next day. Patient A stated she had spoken with the front desk employee about not feeling well several times before being transferred to a black recliner in the recovery room, and then being seen by the Respondent.[11]

15. Patient A stated that a clinic employee had asked her if she was having contractions one right after another, and she replied, "no," and the employee gave her two more white pills.[12] Patient A stated that she

[10] The Respondent failed to document the time in Patient A's clinic record.
[11] Patient A estimated the time as being between 2:00 p.m. and 3:00 p.m.; however, the Respondent documented that he examined her at 1:20 p.m.
[12] Patient A's record reflects she was given Cytotec at 13:00 (1:00 p.m.).

experienced vaginal bleeding for a little over an hour before seeing the Respondent.

16. The Respondent documented that at about 1:20 p.m., he examined Patient A, removed the Laminaria, and determined that she was "not ready yet."

17. At some point after the 1:20 p.m. examination,[13] Patient A stated that her contractions began to increase, and she informed the front desk employee. Patient A stated that the Respondent reexamined her, and stated that she was ready. The Respondent failed to document the time of the examination.

18. Also at an undocumented time, Patient A received intravenous ("IV") Conscious Sedation including Midazolam and Fentanyl. Additionally, the Respondent failed to document who administered the Conscious Sedation. During the Respondent's interview with Board's staff however, he testified that he administered the sedation. He further testified that occasionally he asked the unlicensed Medical Assistant to administer the IV sedation.

19. The Respondent or his staff failed to record any vital signs during Patient A's IV sedation.

20. The Respondent failed to document the time of delivery. He checked off on a form that he had used the following "adjunctive measures" during the delivery: 1) obstetrical maneuvers; 2) sharp curettage of the endometrium; 3) vacuum aspiration of amniotic fluid, blood, placenta, or retained POC

[13] There is no documented time in Patient A's clinic record.

(products of conception); 4) CNS (central nervous system) decompression using a 6mm vacurrete; and 5) uterine massage.

21. The Respondent failed to document an estimated blood loss following the delivery.

22. The Respondent failed to document a fetal weight or the final estimated gestation of the fetus.

23. Patient A recalled that the Respondent had conducted a suctioning procedure that was very painful, and two nurses had held her down. Patient A stated that following the procedure, she had been told to get dressed and she was given two more pills.[14] The boilerplate language on the delivery form stated "Following delivery, the patient sat up, dressed herself and walked to the recovery area."

24. Patient A recalled that between approximately 8:00 p.m. and 9:00 p.m. her vaginal bleeding (hereinafter, "bleeding") increased, and she told the Respondent, who reexamined her. Patient A stated that there was no chaperone in the room during this examination, and the Respondent began to suction with a suctioning machine. Patient A described this procedure as excruciating, and recalled she may have lost consciousness at some point.

25. Patient A recalled undergoing an additional ultrasound, and that the technician indicated the presence of placenta that was caught in scar tissue. There is no record however, of the additional ultrasound in Patient A's clinic record.

[14] The exact medication was not documented in Patient A's medical record.

26. The Respondent documented:

> Unable to remove placenta (possible placenta acreta)[15] [*sic*]. [T]he situation fully explained to her and her mother[.] They were advise [*sic*] to go to E.R. [S]he may need MRI to [rule out] placenta acreta.

The Respondent failed to document the time of the note.

27. At the bottom of the delivery notes page, the Respondent documented at 7:30 p.m.: "Prior to discharge a lot of blood clots removed from vagina and uterine cavity."

28. During his interview with the Board's staff on October 27, 2008, the Respondent denied that Patient A had been bleeding when she left the clinic.

29. There is no documentation in Patient A's clinic record indicating that she was stable. The Respondent failed to document vital signs or to document that a post-operative measure of Patient A's hematocrit had been performed.

30. Patient A recalled that she had told the Respondent that she lived several hours away in Virginia, and his response had been that her bleeding was not that bad and that she would be fine if she went to the hospital in the morning.[16] Patient A stated that after going to the bathroom she told the Respondent that her bleeding had increased; the Respondent replied that some bleeding was to be expected.

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[15] Placenta accreta occurs when the placenta attaches itself too deeply into the wall of the uterus.
[16] There is no evidence in Patient A's clinic record or during the Respondent's interview that he advised her to go directly to the hospital or sign a form indicating that leaving to drive home would be "against medical advice."

31. In an interview with the Board's staff on December 31, 2007, Patient A's mother stated that about an hour into the drive from the clinic to their home in Virginia, she looked at Patient A, who had curled up to sleep, and saw that she was bleeding heavily through her clothes. Patient A's mother stopped at a gas station so Patient A could wash herself. Patient A's mother stated that several minutes after her daughter had entered the gas station's bathroom, she discovered Patient A to be non-responsive and slumped over the toilet. Patient A's mother immediately requested that a gas station employee contact 911; an ambulance transported Patient A to Potomac Hospital in Virginia. According to Potomac Hospital's records, Patient A was admitted to the Emergency Room at 11:53 p.m. on October 25, 2007.

32. At about 1:00 a.m. on October 26, 2007, Dr. L-S[17] examined Patient A, and conducted a bedside pelvic sonogram, which revealed retained products of conception (placenta).

33. Patient A's hemoglobin at the time of admission was 7.4 gm/dL[18] and her hematocrit was 21.1%.[19] Her blood pressure was 95/53.

34. Between 2:00 a.m. and 3:00 a.m., records indicate that Dr. L-S removed Patient A's placental tissue through a suction D&C under general anesthesia, and Patient A "tolerated the procedure well." A pathology report stated there was 16.4 grams of placental tissue.

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[17] The complainant.
[18] Normal range is 12-16 gm/dL.
[19] Normal range is 37-48 %.

35. Postoperatively, Patient A received 2 units of packed red blood cells and was discharged the following day, October 27, 2007.

RESPONDENT INTERVIEW

36. The Respondent during his interview with the Board's staff testified to the circumstances surrounding Patient A's pregnancy termination:

> **Interviewer:** Okay. Why don't you tell me about the care that you provided to that patient?
>
> **Respondent:** Okay. This patient came in with her mother and I think she was second trimester, I don't know how many weeks she was, but I can tell you. But she was second trimester, we finish the procedure, the fetus came – we got the fetus out. We could not get the placenta.
>
> ...
>
> And this patient was very, very scared, why I couldn't get it out, and to remind me she may have placenta accreta. And I explain for her, and I explain for her mother. I said, listen, right now she is not bleeding. Whether you can wait here, we send you to the hospital. She said no, no, no; I'm tired; I want to go home.
>
> I said, listen, this is an emergency. I know you are tired, but please, if you are not bleeding, wait, go tomorrow morning to the hospital and tell, you know, what you need, or they can call me. I give my phone number to her. I think I wrote everything on the chart. And they said no, we're going to go, but we will call you. And they live far from here. I said please, as soon as blood, something happen, go to emergency room, don't wait for tomorrow. You start hemorrhaging.

V. Charges

37. The Respondent's conduct, as outlined above, in whole or in part constituted unprofessional or immoral conduct in the practice of medicine in violation of Health Occ. § 14-404(a)(3)(i) and/or (ii); and/or patient abandonment in violation of Health Occ. § 14-404(a)(6).

38. The Respondent's conduct, as outlined above, in whole or in part failed to meet the standard for delivery of quality medical care, in violation of Health Occ. § 14-404 (a) (22) and/or his documentation was inadequate in violation of Health Occ. § 14-404 (a) (40) for Patient A, for reasons including but not limited to the following:

a. The Respondent, despite his knowledge of the retained placenta and that Patient A possibly had placental accreta, failed to recognize this as a life threatening condition;

b. The Respondent failed to immediately transport Patient A (or ensure Patient A was taken) to a hospital for further evaluation and treatment (complete removal of the placenta);

c. The Respondent failed to take (or order his staff to take) or record vital signs of Patient A during IV sedation;

e. The Respondent failed to document the time he administered IV sedation to Patient A;

f. The Respondent failed to evaluate or record the estimated blood loss following the procedure;

g. The Respondent failed to repeat Patient A's hematocrit post-operatively; and/or

h. The Respondent failed to take (or order his staff to take) or record vital signs of Patient A post-operatively.

NOTICE OF POSSIBLE SANCTIONS

If, after a hearing, the Board finds that there are grounds for action under Md. Health Occ. § 14-404 (a) (3) (i) and/or (3) (ii) and/or (6) and/or (22) and/or (40), the Board may impose disciplinary sanctions against Respondent's license, including revocation, suspension, reprimand and/or probation and/or may impose a fine.

NOTICE OF CASE RESOLUTION CONFERENCE

A Case Resolution Conference in this matter is scheduled for **December 1, 2010, at 10:00 a.m.** at the Board's office, 4201 Patterson Avenue, Baltimore, Maryland 21215. The nature and purpose of the case resolution conference is described in the attached letter to the Respondent. If this matter is not resolved on terms accepted by the Board, an evidentiary hearing will be scheduled.

7/27/10
Date

John T. Papavasiliou, Deputy Director
Maryland State Board of Physicians