

VIRGINIA:

BEFORE THE DEPARTMENT OF HEALTH PROFESSIONS

IN RE: ALLAN ZELIG SCHWARTZBERG, M.D.
License No.: 0101-225414


ORDER

In accordance with Section 54.1-2409 of the Code of Virginia (1950), as amended, ("Code"), I, Dianne L. Reynolds-Cane, M.D., Director of the Virginia Department of Health Professions, received and acted upon evidence that the license of Allan Zelig Schwartzberg, M.D., to practice medicine in the State of Maryland was summarily suspended by an Order for Summary Suspension of License to Practice Medicine entered August 11, 2010. A certified copy of the Order for Summary Suspension of License to Practice Medicine (with attachment) is attached to this Order and is marked as Commonwealth's Exhibit No. 1.

WHEREFORE, by the authority vested in the Director of the Department of Health Professions pursuant to Section 54.1-2409 of the Code, it is hereby ORDERED that the license of Allan Zelig Schwartzberg, M.D., to practice medicine and surgery in the Commonwealth of Virginia be, and hereby is, SUSPENDED.

Upon entry of this Order, the license of Allan Zelig Schwartzberg, M.D., will be recorded as suspended and no longer current. Should Dr. Schwartzberg seek reinstatement of his license pursuant to Section 54.1-2409 of the Code, he shall be responsible for any fees that may be required for the reinstatement and renewal of his license prior to issuance of his license to resume practice.

Pursuant to Sections 2.2-4023 and 54.1-2400.2 of the Code, the signed original of this Order shall remain in the custody of the Department of Health Professions as a public record and shall be made available for public inspection and copying upon request.



Dianne L. Reynolds-Cane, M.D., Director
Department of Health Professions

ENTERED: _____

9-27-10



COMMONWEALTH of VIRGINIA

Dianne L. Reynolds-Cane, M.D.
Director

Department of Health Professions
Perimeter Center
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Henrico, Virginia 23233-1463

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CERTIFICATION OF DUPLICATE RECORDS

I, Dianne L. Reynolds-Cane, M.D., Director of the Department of Health Professions, hereby certify that the attached Order for Summary Suspension of License to Practice Medicine (with attachment) entered August 11, 2010, regarding Allan Zelig Schwartzberg, M.D., is a true copy of the records received from the Maryland State Board of Physicians.

D. Reynolds-Cane MD

Date: 9-27-10

Dianne L. Reynolds-Cane, M.D.

IN THE MATTER OF
ALLAN Z. SCHWARTZBERG, M.D.

Respondent

License Number: D10705

* BEFORE THE
* MARYLAND STATE
* BOARD OF PHYSICIANS
* Case Number: 2008-0004

* * * * *

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

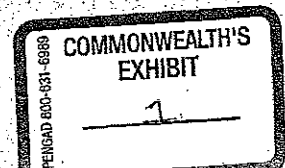
The Maryland State Board of Physicians (the "Board") hereby **SUMMARILY SUSPENDS** the license of Allan Z. Schwartzberg, M.D., (the "Respondent") (D.O.B. 12/05/1930), license number D10705, to practice medicine in the State of Maryland. The Board takes such action pursuant to its authority under Md. State Govt Code Ann. § 10-226(c)(2009 Repl. Vol.) 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:¹

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 Maryland on April 21, 1971.

¹ 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. The Respondent is board-certified in psychiatry. He maintains an office for the practice of psychiatry, Comprehensive Behavioral Services, located at 9021 Shady Grove Court, Gaithersburg, Maryland.
3. On or about July 10, 2007, the Board received a complaint from a former patient of the Respondent. The Complainant, who had been a patient of the Respondent since 2004, stated that at her July 5, 2007 visit, the Respondent "kept falling asleep at his desk talking to me," and "kept nodding off while writing my Rx [prescription] and asking me questions." The Complainant further stated that the Respondent asked her the same questions "over and over again." She reported that he made "off the wall" statements to her such as, "you'll like that place, we did," as if the Complainant had told him she was going to a specific place, when she had made no such statement.
4. The Complainant stated that during her visit, the Respondent did not address or follow-up on issues she had raised and wanted his help with, including her feelings of agitation and violence towards her surroundings.
5. The Complainant attached to her complaint prescriptions written by the Respondent on July 5, 2007. The Respondent wrote an incorrect date, "10/17/07," on the prescriptions.
6. Upon receipt of the complaint, the Board initiated an investigation which included an interview of the Complainant by Board staff, an interview with the Respondent by Board staff and referral to the Maryland Psychiatric Society for peer review.

7. During his July 7, 2009 interview with Board staff, the Respondent stated that the Complainant was a "very difficult patient."
8. The Respondent did not specifically recall the Complainant's July 5, 2007 visit, but acknowledged that "it's possible that I may not have been alert."
9. On October 10, 2009, the Respondent was interviewed by two psychiatrists with the Maryland Psychiatric Society as part of the peer review process.
10. During the interview, the Respondent stated, *inter alia*, that he does not recall the details of the Complainant's visit about which she complained, but that his behavior might have been a post-prandial reaction or his lack of his usual afternoon exercise on that date. The Respondent advised the reviewers that he does not have a medical condition that would account for his behavior, nor was he on any medication. The Respondent stated that he planned to see a neurologist to determine if there might be an unsuspected medical reason for his falling asleep and his reported odd statements during the visit. One of the reviewers noted that the Respondent's plan of action was appropriate for a responsible physician.
11. On January 13, 2010, the Respondent underwent neurological testing by a neurologist of his choosing, "Dr. G." Dr. G noted that the Respondent was concerned about Parkinson's Disease, but did not feel he had any symptoms suggestive of the disorder. The Respondent also told Dr. G that he (the Respondent) feels that he has not had any cognitive decline. Dr. G conducted a physical examination and a neurological examination.

He also administered the Montreal Cognitive Assessment ("MoCA") test and reported that the Respondent achieved a score of 26 out of total of 30.

12. The MoCA is a 10-minute cognitive screening tool to assist first-line physicians in the detection of mild cognitive impairment and to determine whether the individual may need a more thorough diagnostic work-up for Alzheimer's Disease, Parkinson's Disease or dementia. A score of 26 or higher is generally considered normal.
13. Dr. G opined that, "[o]ther than having hypertension on today's examination the patient appears to be neurologically intact. There is no evidence at the present time of Parkinson's or Alzheimer's disease. I see no need for further neurologic evaluation at this time."
14. The Board thereafter referred the Respondent to a Board-approved neurologist, "Dr. H," for evaluation.
15. On June 18, 2010, the Respondent presented to Dr. H for neurological evaluation. The Respondent told Dr. H that he does not believe he has any memory problems, cognitive problems or any other neurologic problem.
16. Dr. H conducted a physical examination of the Respondent, the results of which were normal. Dr. H opined that the Respondent appeared very healthy and much younger than his age.
17. The Respondent's mental status examination revealed no deficits in attention, short or long term memory or fund of knowledge. He was alert

and oriented in all spheres. His language comprehension and production were normal; his speech was fluent and grammatical with no paraphasias.²

18. Dr. H tested the Respondent's cranial nerves (II – XII) in detail and found them to be within normal range. The Respondent did not demonstrate dysphonia³ or dysarthria.⁴
19. The Respondent exhibited no tremor upon examination. His stance was normal and his gait was intact.
20. Dr. H conducted a neurobehavioral evaluation of the Respondent that included a battery of tests which took approximately 1 hour and 35 minutes to administer.⁵
21. Based upon the Respondent's performance, Dr. H concluded that he has, "excellent memory and verbal skills, but moderate-to-severe deficits in executive functioning including organizing, sequencing and the higher level cognitive skills such as changing cognitive sets and inhibition of first responses." Dr. H opined that the Respondent's results were inconsistent with a diagnosis of Alzheimer's Disease, but were an indication of frontal lobe dysfunction.
22. Dr. H noted that the Respondent's "disproportionately impaired" performance on the Trail-making Test Part B⁶ (10 errors in 158 seconds)

² The production of unintended syllables or words during the effort to speak.

³ The impairment in the ability to produce voice sounds using vocal organs.

⁴ The impairment in the ability to produce spoken words.

⁵ The tests administered were: Mini-Mental Status Examination; Wechsler Memory Scale (WMS-III); Wechsler Adult Intelligence Scale (WAIS-III); Rey Auditory Verbal Learning Test; Controlled Oral Word Association Test; Rey-Osterreith Complex Figure Drawing Test; Trail-making Test (Forms A and B); Stroop Neuropsychological Screening Test; Color Task and Color-Word Task.

suggested the possibility of right frontal lobe dysfunction, rather than left frontal lobe dysfunction, and the possibility that a stroke was the etiology of the Respondent's impairment. The Respondent's poor performance on the Stroop Color Word Task⁷ (16 correct responses out of 112) further supported Dr. H's conclusion.

23. Dr. H recommended that the Respondent undergo an MRI of the brain to evaluate for stroke. She recommended that he not practice psychiatry until the MRI results were obtained.
24. Dr. H further recommended that the Respondent's driving ability be evaluated.
25. Dr. H's diagnosis of the Respondent was: 1. cognitive impairment, predominantly in the domain of executive function, severe enough that [the Respondent's] deficits would interfere with his ability to perform his ability to perform the work of a psychiatrist; 2. rule out stroke.
26. On July 2, 2010, the Respondent underwent an MRI of his brain. The scan revealed two small foci of encephalomalacia⁸ in the right thalamus and left putamen, likely reflecting old lacunar infarcts.⁹
27. On July 7, 2010, Dr. H supplemented her report to the Board to include her review of the Respondent's MRI results. Dr. H reported that the MRI revealed "2 small old strokes... which can account for his cognitive deficits

⁶ The Trail-making test is a neuropsychological test of visual attention and task switching. In Part B, the subject is required to connect the dots of 25 consecutive targets, alternating between numbers and letters (1, A, 2, B...).

⁷ In the Color Word Task, the name of a color is printed in a different color.

⁸ The localized softening of the brain substance, due to hemorrhage or inflammation.

⁹ Small infarcts in the deeper part of the brain and in the brain stem. A small lacunar infarct can cause as severe a neurological deficit as a much larger hemispheric infarct but without the life-threatening cerebral edema that is seen in the latter.

predominantly in executive function.” She further reported that she had spoken to the Respondent about the MRI results and had recommended cognitive rehabilitation, as well as an echocardiogram and Magnetic Resonance Angiogram¹⁰ (“MRA”) of the neck to determine the etiology of the strokes. The Respondent informed Dr. H that he had passed his driving test evaluation¹¹ and asked if he could resume his practice while the recommended tests were being performed. Dr. H responded as follows:

I told him that it remained my opinion that his cognitive dysfunction would interfere with his ability to competently carry out his responsibilities as a physician, and that he should not return to work at this time. I do not know if cognitive rehabilitation will result in adequate improvement in cognition for him to eventually return to work.

28. After Dr. H's last meeting with the Respondent, they spoke on at least 2 occasions. The Respondent expressed his need to work and his anger that his career is ruined. The Respondent is aware that he has right frontal lobe dysfunction; however, his conduct evidences his inability to integrate that knowledge with the result that it impairs his ability to function as a competent psychiatrist.
29. Dr. H had referred the Respondent to a neurologist for follow-up and treatment. The Respondent made an appointment, presented to the office of the neurologist at the appropriate time, but left before being seen. He has not returned for treatment.

¹⁰ An MRA is a type of magnetic resonance imaging (“MRI”) scan that provides views of blood vessel walls and blood flow.

¹¹ The Respondent provided to Dr. H a copy of the driving evaluation report, which she transmitted to the Board.

CONCLUSION OF LAW

Based on the foregoing 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. § 10-226 (c) (2) (i) (2009 Repl. Vol.).

ORDER

Based on the foregoing, it is this 11th day of August, 2010, 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 is hereby **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) and E on the Summary Suspension has been scheduled for **August 25, 2010, at 1:00 p.m.**, at the Maryland Board of Physicians, Room 108-109, 4201 Patterson Avenue, 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

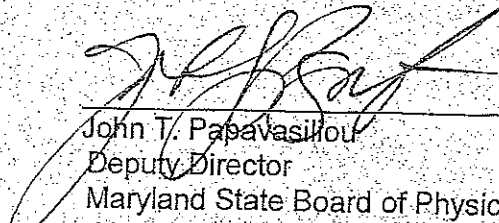
ORDERED that on presentation of this Order, the Respondent **SHALL SURRENDER** to the Board's Compliance Analyst, the following items:

- (1) the Respondent's original Maryland License D10705;
- (2) the Respondent's current renewal certificate;
- (3) the Respondent's Maryland Controlled Dangerous Substance Registration;
- (4) all controlled dangerous substances in the Respondent's possession and/or practice;
- (5) all Medical Assistance prescription forms;
- (6) all prescription forms and pads in her possession and/or practice; and
- (7) Any and all prescription pads on which his name and DEA number are imprinted; 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 (2009 Repl. Vol.); and be it further

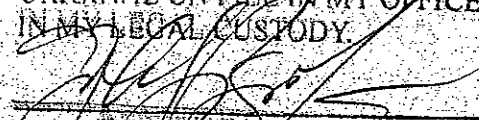
ORDERED that this is a Final Order of the Board and, as such, is a **PUBLIC DOCUMENT** pursuant to Md. State Gov't Code Ann. § 10-611 *et seq.*

8/11/10
Date



John T. Papavasiliou
Deputy Director
Maryland State Board of Physicians

I HEREBY ATTEST AND CERTIFY UNDER PENALTY OF PERJURY ON 9/2/10 THAT THE FORGOING DOCUMENT IS A FULL, TRUE AND CORRECT COPY OF THE ORIGINAL ON FILE IN MY OFFICE AND IN MY LEGAL CUSTODY.



DEPUTY DIRECTOR
MARYLAND BOARD OF PHYSICIANS



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

September 14, 2010

Allan Schwartzberg, M.D.
6616 Kenhill Road
Bethesda, Maryland 20817

Shadonna Hale, Esquire
Wilson, Elser, Moskowitz, Edelman and Dicker LLP
200 St. Paul Plaza, 25th Floor
Baltimore, Maryland 21202-2004

Re: License No. D10705
Case No. 2008-0004

Dear Dr. Schwartzberg and Counsel:

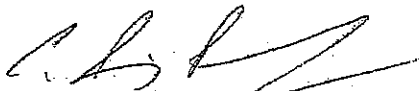
On August 11, 2010, the Board issued an **ORDER FOR SUMMARY SUSPENSION OF LICENSE TO PRACTICE** in this case. Dr. Schwartzberg was given an opportunity to attend a hearing on that issue on August 25, 2010. Dr. Schwartzberg attended the hearing on that date together with his counsel, Shadonna Hale, Esq. The State was represented by Victoria Pepper, Esq., Administrative Prosecutor.

After considering the presentations at the hearing, the Board determined that it would not lift the summary suspension first imposed on August 11, 2010. The Board concluded that the arguments and papers submitted, and the responses to the Board's questions, did not significantly change the Board's findings or conclusions regarding the danger to public health which would be posed by Dr. Schwartzberg practicing medicine at this time.

Under the Board regulations, you have the right to request a full evidentiary hearing before an Administrative Law Judge. This request will be granted if you make it within ten days of the date of this letter. Any request for a hearing must be filed with Barbara Vona, Esq, Chief of Compliance Administration, at the Board's address set out above. If you request such a hearing, the regulations require that an Administrative Law Judge set the hearing to begin within 30 days of your request. The regulations governing this procedure are set out at COMAR 10.32.02.05 I & J.

This letter constitutes an order of the Board resulting from formal disciplinary action and is therefore a public document.

Sincerely yours,



C. Irving Pinder, Jr.
Executive Director

C: Victoria Pepper, Assistant Attorney General