IN THE MATTER OF	*	BEFORE THE MARYLAND
LAWRENCE D. EGBERT, M.D.	*	STATE BOARD OF PHYSICIANS
Respondent.	*	Case Number: 2011-0870
License No. D16049	*	

* * * * * * * * * * * * *

FINAL DECISION AND ORDER

PROCEDURAL HISTORY

Lawrence D. Egbert, M.D. is a board-certified anesthesiologist, who has been licensed by the Maryland State Board of Physicians ("Board") since 1952. In November, 2012, the Board charged Dr. Egbert with unprofessional conduct in the practice of medicine, *see* Health Occ. § 14-404(a)(3)(ii), based on his actions as the Medical Director for Final Exit Network ("FEN"), a national right-to-die organization, and his participation in the assisted suicides of six FEN members.

Dr. Egbert requested and received an evidentiary hearing on September 26, 2013, at the Office of Administrative Hearings. At that hearing, the State presented expert witness testimony from Henry Silverman, M.D., who testified as an expert in internal medicine and medical ethics. Dr. Egbert did not testify or present any witnesses. In a Proposed Decision issued on December 23, 2013, Administrative Law Judge ("ALJ") Jennifer M. Carter Jones found that Dr. Egbert engaged in unprofessional conduct in the practice of medicine based on Dr. Egbert's review of FEN applicants' medical records, his determinations on applicants' suffering, and his determinations on whether applicants' conditions could or could not benefit from additional medical treatment. The ALJ further found that Dr. Egbert held himself out as a treating physician to other physicians so they would provide patients' medical documents to him as part

of the FEN screening process. The ALJ did not deem Dr. Egbert's presence or his assistance in the suicides to be "in the practice of medicine." The ALJ recommended that Dr. Egbert's medical license be revoked.

On January 8, 2014, Dr. Egbert filed exceptions (dated January 7, 2014) to the ALJ's Proposed Decision. The State also filed exceptions and a response to Dr. Egbert's exceptions on January 16, 2014. Both parties appeared before Disciplinary Panel B (the "Panel") of the Board for an oral exceptions hearing on March 26, 2014.

FINDINGS OF FACT

The Panel adopts the findings of fact numbered 1-33 proposed by the ALJ (Attached as Exhibit 1).[1] The facts, as described by the ALJ, and summarized below, are largely undisputed. Dr. Egbert was the Medical Director for FEN, an organization dedicated to supporting and aiding non-terminally ill persons to hasten their deaths. Individuals who wanted the organization's help to commit suicide would submit to FEN an application with their medical records and a statement explaining why they wished to end their lives.

As the Medical Director of FEN, Dr. Egbert received each applicant's medical record and determined whether the applicant's request for an assisted suicide would be accepted.[2] Dr. Egbert explained that he reviewed the medical records to determine: (1) whether the applicant accurately identified the source of his or her suffering, (2) whether the applicant's suffering was "horrible," and (3) whether the medical treatment that the applicant was receiving was adequate. In at least one circumstance, Dr. Egbert rejected an application because the applicant's pain was

[1] The ALJ's Findings of Fact incorporated twenty stipulated facts (numbered 1-20) agreed to by the parties and thirteen additional factual findings (numbered 21-33).
[2] The applications were reviewed by the "medical evaluation committee." That committee consisted of professionals in various disciplines, each needing to be licensed in their discipline, and at least one layperson. As the medical director, Dr. Egbert made the final decision for each applicant.

not being properly treated and he advised the applicant to seek further pain management from her physician. Dr. Egbert also noted that FEN accepted applicants with exclusively psychological/psychiatric issues. For psychological and psychiatric cases, Dr. Egbert could refer the applicant to a mental health specialist, if he believed that his own determination would be inadequate.

After FEN accepted the applicant as a member to FEN, that member would receive a copy of the Final Exit book, which detailed how to commit suicide using helium gas to hasten death by releasing helium into an airtight bag/hood over the member's head. FEN assigned each member one or two "Exit Guides" to aid the member's suicide. The Exit Guide talks with the member, rehearses the suicide with the member, ensures all the paperwork is completed, attends the member's suicide, and holds the member's hands to comfort the member and to prevent the member from involuntarily displacing the bag during the suicide. After the member's death, the Exit Guide removes the helium tanks and bag, leaves, and disposes of the suicide paraphernalia. The suicide paraphernalia is immediately removed from the suicide location to prevent the cause of death from being determined and listed on the death certificate and to hinder police investigations into the circumstances of the death. Each member plans in advance the person who will "discover" the body and that person either calls 911 or the family physician. After the suicide, the Exit Guide contacts the "discoverer" to find out what occurred after the death was reported.

It is undisputed that Dr. Egbert participated in six suicides in the State of Maryland as either a Senior Exit Guide or as the members' only Exit Guide. Dr. Egbert reviewed their applications and medical records and recommended accepting them as members. Dr. Egbert attended their suicide rehearsals. He held each member's hands and talked to him or her. Each

of the members died from asphyxiation due to helium inhalation. After each member died, Dr. Egbert removed the hoods and helium tanks and disposed of the helium tanks. In each of these suicides, the death certificates did not list asphyxiation, helium inhalation, or suicide as the cause of death. Dr. Egbert stipulated that in each of these suicides, the FEN member was not terminally ill, that is, would not have died within six months. The six FEN members for whom Dr. Egbert acted as an Exit Guide are as follows:

1. Patient A was a 68-year-old man with Parkinson's disease who suffered from gait disturbances and mental fogginess. He died on May 25, 2008. His death certificate states Coronary artery disease due to Parkinson's disease as the cause of death.

2. Patient B was a 71-year-old woman suffering from progressive Multiple Sclerosis for 45 years complicated by axonal polyneuropathy. She died on November 20, 2008. Her death certificate states acute myocardial infarction and multiple sclerosis as the cause of death.

3. Patient C was an 85-year-old woman with a medical history of significant peripheral vascular disease, diabetes mellitus, hypertension, coronary artery disease, atrial fibrillation s/p pacemaker placement, anemia, and depression with significant functional impairment. She stated that her reason for suicide was to leave enough money to establish a trust to care for her son with Asperger syndrome. She died on October 15, 2008. Her death certificate states that she died from heart failure and aortic valvular disease.

4. Patient D was an 82-year-old woman with chronic obstructive pulmonary disease with increasing difficulty in breathing. She died on July 16, 2008. Her death certificate states that she died from right heart failure, emphysema, and smoking.

5. Patient F was an 87-year-old woman with worsening monopolar depression. She died on August 5, 2006. Her death certificate lists atherosclerosis, cardiovascular disease as the causes of death.

6. Patient G was a 76-year-old woman with degenerative ataxia not amenable to treatment, progressive symptoms and was diagnosed with depression. She died on May 27, 2004. Her death certificate states that she died from degenerative cerebeller disorder.

ANALYSIS

The issue in this case is whether Dr. Egbert's actions as Medical Director of FEN and his assistance to the suicide of six members of FEN constitutes unprofessional conduct in the practice of medicine under Health Occ. § 14-404(a)(3)(ii). In the Board's analysis, the Board first discusses whether Dr. Egbert's conduct was "in the practice of medicine," second, whether his conduct was "unprofessional," and finally addresses miscellaneous exceptions filed by Dr. Egbert.

I. PRACTICE OF MEDICINE

A. ALJ's Proposed Decision and Exceptions

In her proposed decision, the ALJ found that Dr. Egbert engaged in the practice of medicine based on his review and evaluation of applicants' medical records. The ALJ, however, found that Dr. Egbert's presence and assistance in the members' suicides was not in the practice of medicine.

Dr. Egbert filed exceptions to the ALJ's proposed decision's conclusion that Dr. Egbert's review of the medical records was in the practice of medicine. He claims that the review of the medical records was not within the practice of medicine. He also claimed that he had not received notice in the charges that his review of medical records was in the practice of medicine.

The State filed exceptions to the ALJ's proposed decision's conclusions that aiding patients in committing suicide was not the practice of medicine, arguing that the continuum of Dr. Egbert's conduct including reviewing the medical records, his participation in the suicide rehearsal, his conduct during the suicides, and his conduct after the suicides, such as removing the helium tanks and suicide paraphernalia, should be considered the practice of medicine.

B. Practice of Medicine in Statute and Caselaw

The Medical Practice Act, Health Occ. § 14-101(o) defines practicing medicine as follows:

> (1) "Practice medicine" means to engage, with or without compensation, in medical:
>
> (i) Diagnosis;
> (ii) Healing;
> (iii) Treatment; or
> (iv) Surgery.
>
> (2) "Practice medicine" includes doing, undertaking, professing to do, and attempting any of the following:
>
> (i) Diagnosing, healing, treating, preventing, prescribing for, or removing any physical, mental, or emotional ailment or supposed ailment of an individual:
>
> 1. By physical, mental, emotional, or other process that is exercised or invoked by the practitioner, the patient, or both; or
> 2. By appliance, test, drug, operation, or treatment;
>
> (ii) Ending of a human pregnancy; and
> (iii) Performing acupuncture as provided under § 14–504 of this title.

Maryland courts have not strictly interpreted the statutory definition of practicing medicine, but rather have applied a broad interpretation of what is "in the practice of medicine" under Health Occ. § 14-404(a)(3)(ii). *See Kim v. Maryland State Board of Physicians*, 423 Md. 523, 527 (2011) (lying on a renewal application deemed in the practice of medicine); *Finucan v. Maryland Bd. of Physician Quality Assurance*, 380 Md. 577, 597 (2004) (sexual relationship with three patients deemed in the practice of medicine); *Board of Physician Quality Assurance v.*

Banks, 354 Md. 59, 66 (1999) (sexual harassment of administrative employees of a hospital deemed in the practice of medicine); *Cornfeld v. State Board of Physicians*, 174 Md. App. 456, 468 (2007) (lying to a hospital peer review deemed in the practice of medicine). In deciding whether Dr. Egbert's action is in the practice of medicine, the Board must consider whether his actions were "intertwined with patient care to pose a threat to the patients or the medical profession." *Cornfeld*, 174 Md. App. at 474.

C. Analysis

1. Physician-Patient Relationship

Before the Panel considers whether Dr. Egbert's actions can be considered intertwined with patient care, the Panel must determine whether these FEN applicants and members were patients. The Panel concludes that the FEN applicants and members were Dr. Egbert's patients.

First, Dr. Egbert considered the FEN members to be his patients. In his letter to Board staff and throughout his interview with Board staff, Dr. Egbert described the FEN members who committed suicide as "patients." In his letter to the Board, Dr. Egbert further stated that he believed that "if a person has the right to hasten death, a physician has the right to guide him or her in doing this in a painless and dignified manner."

Second, Dr. Egbert held himself out to the members as a physician and medical professional. Dr. Egbert was identified as the Medical Director of FEN and performed the duties, including deciding which individuals could be approved for membership based on the severity of their illnesses. In two publications for FEN members, Dr. Egbert was referred to by his title as an "M.D." In a document titled "Procedure for Hastened Death Using Inert Gas," Dr. Egbert was identified as an editor with his "M.D." and "M.P.H." degrees listed after his name. Additionally, the training manual suggested that if a physician refuses to provide a patient's

medical record, the patient could send the records to "Lawrence Egbert, MD MPH," and suggested the patient tell his doctor that "Dr. Egbert" is a pain management specialist. This training manual refers to the FEN members as patients as well. These documents indicate that Dr. Egbert and FEN identify their members as patients, and Dr. Egbert is identified to them as a physician. As discussed further below, the actions taken by Dr. Egbert were also the type of actions that a physician undertakes, such as reviewing and evaluating patient medical records and aiding the patients with their end of life decisions.

2. Review of Medical Records to Determine Diagnosis of Conditions, Severity of Suffering and Possible Treatment Options is "In the Practice of Medicine."

Next, the Panel finds that the continuum of Dr. Egbert's conduct was intertwined with patient care, that is, involved patient welfare, health, and the potential for patient harm. Dr. Egbert acted in his role as a physician both when he reviewed the medical records as part of his duty as medical director of FEN as well as the actions he took as an Exit Guide.

Dr. Egbert argues in his exceptions that lawyers, nurses, insurance adjusters, nutritionists and pharmacists all review patient records without engaging in the practice of medicine. While that is true, each professional reviews records for different purposes. The Panel concludes that Dr. Egbert cannot divest himself of his licensure or his medical training and expertise or his purpose in reviewing the medical records, in considering whether he has acted as a physician.

The State's expert, Dr. Silverman, opined that determinations based on medical records about what disease or illness the person was suffering from, whether the individual had intolerable suffering, and whether the care the individual was receiving was sufficient are medical determinations because he made medical assessments about patients conditions. *See*

Health Occ. § 14-101(o). Dr. Egbert presented no expert testimony to contradict this opinion. The Panel finds Dr. Silverman's testimony persuasive.

Further, Dr. Egbert stated in his letter to the Board Senior Compliance Analyst:

> My work for the Final Exit Network was to evaluate each person's request to hasten death. I received their medical records and a copy of their letters stating why life had become only suffering and was no longer bearable. *It was my job to evaluate the care they were receiving and occasionally there were suggestions made to improve their care.* I had several psychologists for consultation. No one has suggested that *our patients* were not suffering severely.

Evaluation of medical care for improved care is one example that demonstrates that his role in reviewing medical records was in the medical realm. Another example given by Dr. Egbert at his interview concerned an applicant who wanted to commit suicide because of her pain. After his review of the file, he determined that her pain was not being properly treated. He advised the patient that she tell her doctor that she needed more pain medicine, and "this doctor from Hopkins [Dr. Egbert], will be glad to tell him how to do it right." As a result of his medical advice, the applicant withdrew her application for FEN. Such evaluation and advice are illustrative of the way in which Dr. Egbert's review of patient files in this context was medical in nature and within the practice of medicine. Even if the review were not squarely under the definition of "practicing medicine," it was certainly "in the practice of medicine" under the broad interpretation the Court of Appeal applied in *Banks.* 354 Md. at 66.

Dr. Egbert noted that he sought additional information if he believed that the medical records were incomplete. Additionally, Dr. Egbert made referrals to psychologists when he was uncomfortable evaluating the psychology of the patients. Dr. Egbert explained that with regards to the psychology of patients "[t]he difficulty was that I am not a psychiatrist." In so doing, Dr. Egbert used his medical expertise, and when he did not have requisite medical expertise, he

would refer the patient to a specialist, rather than use his lay, non-medical opinion. Referring patients to specialists is also an element of what physicians do. This also indicates that in non-psychiatric cases he was using his expertise as a physician to diagnose the patient. Dr. Egbert's evaluations were, thus, in the practice of medicine, even in cases that Dr. Egbert approved without comment.

In sum, Dr. Egbert used his medical expertise to evaluate the medical records, diagnose the patients, and measure the severity of their conditions, and he gave medical advice about treatment, when appropriate. When he did not feel comfortable with his diagnosis or felt his medical knowledge was insufficient, such as the psychological matters, he would refer the patients to a specialist. The Board, thus, rejects Dr. Egbert's claim that he did not practice medicine.

3. Aiding Suicide Concerned Patient Well-being and is In the Practice of Medicine.

Dr. Egbert was also acting in the practice of medicine in his role as an Exit Guide because his conduct led to extreme threats to the patient's well-being by aiding their suicide. The Maryland Court of Appeals held that suicide is a type of harm to patients that may be evidence that the physician's conduct should be considered within the practice of medicine. *See Finucan*, 380 Md. at 599 (quoting *Finucan*, 151 Md. App. at 417) (considering the possibility that Dr. Finucan's sexual relationship with a patient caused her apparent suicide attempt as evidence that Dr. Finucan's conduct was in the practice of medicine).

4. Rehearsal and Procedure Aiding Suicide is In the Practice of Medicine.

Dr. Egbert's review of the patients' medical records cannot be separated from his conduct in rehearsing the process for suicide, including instructions on how to use the materials, walking patients through the steps of the suicide, and holding the patients' hands during the suicide.

The ALJ explained that "participation in assisted suicide is antithetical to the long-standing or prevailing purpose of medical practice to treat and heal patients and/or to make patients comfortable." ALJ Proposed Decision at 19. The ALJ stated that assisting suicide was not for the purpose of healing or relieving patients' symptoms of ailments, and, therefore, should not be considered in the practice of medicine.

The Panel disagrees with the ALJ's rationale on this point because the ALJ disregarded caselaw regarding the practice of medicine. Physicians are often found guilty of unprofessional conduct in the practice of medicine for acts that are not facially related to the practice of medicine or are antithetical to the practice of medicine. Specifically, Maryland courts have found the practice of medicine to include sexually harassing hospital co-workers (*Banks*, 354 Md. at 76-77), sexual liaisons with patients (*Finucan*, 380 Md. 601), lying on peer reviews (*Cornfeld*, 174 Md. App. at 462), and lying on a renewal application. (*Kim*, 423 Md. at 527). Though none of these cases directly involved a physician acting to treat or heal patients they each were considered within the practice of medicine. Based on this caselaw, the Panel rejects the ALJ's reasoning.

The State's expert, Dr. Silverman, testified that by holding the hands of the patients while they committed suicide, Dr. Egbert provided emotional support to the patient and ensured that the hood was not displaced because of an involuntary spasm of the patients' arms. Dr. Silverman opined that both – providing emotional support and ensuring the hood stay on – were the role of

a physician and, therefore, constituted the practice of medicine. Dr. Egbert did not provide any expert testimony contradicting this conclusion.

5. Dr. Egbert had Notice that his Review of Medical Records would be Considered In the Practice of Medicine.

Dr. Egbert argues in his exceptions that he was not given notice that his review of medical records was unprofessional conduct in the practice of medicine. The charges allege, however, that "[i]n his capacity as Medical Director, [Dr. Egbert] evaluated the records submitted by applicants to determine whether the applicant's request for assistance would be accepted." This allegation in the charges is sufficient notice that Dr. Egbert could be held responsible for unprofessional conduct in the practice of medicine for his review of medical records.

6. The Principle of *Edjusem Generis* does not Lead to the Conclusion that Assisted Suicide was Outside the Practice of Medicine.

The ALJ concluded assisted suicide was outside the practice of medicine, in part, because the definition of the practice of medicine in Health Occ. § 14-101(o) did not explicitly include assisted suicide, but did include "ending of a human pregnancy." The ALJ used the doctrine of *ejusdem generis* to infer that assisted suicide should not be considered "in the practice of medicine." The doctrine of *ejusdem generis* is defined as "when a general word or phrase follows a list of specifics, the general word or phrase will be interpreted to include only items of the same class as those listed." *Haile v. State*, 431 Md. 448, 468-69 (2013). *Ejusdem generis* may be applied under the following conditions: "(1) the statute contains an enumeration of specific words; (2) the members of the enumeration suggest a class; (3) the class is not exhausted by the enumeration; (4) a general reference supplementing the enumeration, usually following it; and (5) there is not clearly manifested an intent that the general term be given a

broader meaning than the doctrine requires." *Haile*, at 469 (quoting *Boyle v. Maryland-National Capital Park & Planning Comm'n*, 385 Md. 142, 156 (2005)).

The Panel finds that the ALJ's application of the doctrine of *ejusdem generis* was improper. None of the conditions required to apply the doctrine of *ejusdem generis* are present here. The statute does not have an enumeration of specific words and there is no applicable class. The sole inclusion of "ending of a human pregnancy" by itself cannot be sufficient to demonstrate that it is the first of a class of permitted actions. Even if there is an implicit class consisting of controversial practices, there is no indication that this one item, ending pregnancy, can, by itself, be considered an exhaustive list. Finally, there is no general reference supplementing the enumeration. In sum, the doctrine of *ejusdem generis* is not applicable to interpreting the definition of the practice of medicine.

Dr. Egbert's actions throughout the suicide process were "in the practice of medicine," under § 14-404(a)(3)(ii).

II. UNPROFESSIONAL CONDUCT

A. ALJ's Proposed Decision and Exceptions

The ALJ found that, because she had determined that participation during the actual assisted suicide did not constitute the practice of medicine, whether Dr. Egbert's actions were unprofessional or not was of no consequence. The ALJ found that, in Dr. Egbert's review of the medical records, Dr. Egbert's conduct was egregiously unprofessional.

The State took exception to the ALJ's analysis. Dr. Egbert excepted to the conclusion that his review of the medical records was inherently unprofessional.

B. Caselaw

"Unprofessional Conduct" is not defined by the Medical Practice Act, Health Occ. § 14-101. Maryland courts have broadly interpreted what may be considered to be "unprofessional conduct" under Health Occ. § 14-404(a)(3)(ii). *See Finucan*, 380 Md. at 597 (sexual relationship with three patients deemed unprofessional conduct); *Salerian v. Maryland State Bd. of Physicians*, 176 Md. App. 231, 249 (2007) (disclosing confidential physician-patient information was unprofessional conduct); *Cornfeld*, 174 Md. App. at 468 (dishonesty by lying to a hospital peer review deemed unprofessional conduct). Courts have stated that "unprofessional conduct" is "conduct which breaches the rules or ethical code of a profession, or conduct which is unbecoming" a physician in good standing. *Salerian*, 176 Md. App. at 248 (quoting *Finucan*, 380 Md. at 593).

C. Analysis

1. Disposing of the Suicide Paraphernalia was Unprofessional.

Dr. Egbert removed and disposed of the helium tanks, hoods and suicide paraphernalia. According to the *Final Exit* book, the Exit Guide removes suicide paraphernalia to hinder any police investigation, which would lead to longer inquiries. Dr. Egbert's actions in removing the suicide paraphernalia not only hindered police investigations, but also caused other physicians and medical examiners to list the cause of death incorrectly on the patients' death certificates. Dr. Silverman, the State's expert, opined that removing the suicide paraphernalia was deceptive for these reasons. Honesty with patients and colleagues is a fundamental principle of medical ethics. *See* AMA's Principles of Medical Ethics (http://www.ama-assn.org/ama/pub/physician-resources/medical-ethics/code-medical-ethics/principles-medical-ethics.page). *See also Cornfeld*, 174 Md. App. at 479 (quoting *Dr. K. v. State Bd. of Physician Quality Assurance*, 98

Md. App. 103 (1993)). Lying to or misleading other physicians, medical examiners, and/or the police is a dishonest act, *see Cornfeld*, 174 Md. App. at 479, and is unbecoming a medical professional in good standing. *See Salerian*, 176 Md. App. at 248.

2. Dr. Egbert's Conduct was Unprofessional because it was Contrary to the American Medical Association's Code of Medical Ethics.

Dr. Egbert's actions are contrary to the American Medical Association's Code of Medical Ethics, Opinion 2.211. "[A]llowing physicians to participate in assisted suicide would cause more harm than good. . . . Instead of participating in assisted suicide, physicians must aggressively respond to the needs of patients at the end of life. . . . Patients near the end of life must continue to receive emotional support . . . ." *See* State's Exhibit 25. The Panel concludes that performing actions that have been rejected by the AMA's Code of Medical Ethics is evidence of unprofessional conduct. *See Salerian*, 176 Md. App. at 248.

3. Dr. Egbert's Conduct was Unprofessional because it is Illegal under Maryland Law.

Assisting suicide is a criminal act under Section 3-102 of the Criminal Law Article. That Section provides as follows:

> With the purpose of assisting another individual to commit or attempt to commit suicide, an individual may not:
> (1) by coercion, duress, or deception, knowingly cause another individual to commit suicide or attempt to commit suicide;
> (2) knowingly provide the physical means by which another individual commits or attempts to commit suicide with knowledge of that individual's intent to use the physical means to commit suicide; or
> (3) knowingly participate in a physical act by which another individual commits or attempts to commit suicide.

Dr. Egbert participated in the patients' physical act of committing suicide, by holding down the patients' hands. Committing this illegal act is further evidence that Dr. Egbert's actions were unprofessional. *See Salerian*, 176 Md. App. at 248.

4. Dr. Egbert's Conduct was Unprofessional because it does not Include Protective Safeguards Required by States that Permit Physician Assisted Suicide.

Dr. Egbert's practices violate the strict protective standards to minimize the potential for abuse required in states that permit assisted suicide. In his expert report, Dr. Silverman noted that states that allow physician assisted suicide require a psychiatric consultation to ensure existence of a rational decision. Dr. Egbert and FEN do not have such a consultation to ensure rational decisions by the FEN applicant or member.

Dr. Egbert and FEN also ignore the strict requirement by states that permit assisted suicide that limit such practice only to terminal patients. Oregon, Washington and Vermont, the three states that have passed laws permitting physician assisted suicide, each limit physician assisted suicide to patients suffering from terminal disease. *See* 18 Vt. Stat. Ann. § 5281 (terminal disease is defined as "an incurable and irreversible disease which would, within reasonable medical judgment, result in death within six months"); Or. Rev. Stat. 127.800 §1.01 (defining terminal disease as "incurable and irreversible disease that has been medically confirmed and will, within reasonable medical judgment, produce death within six months"); Wash. Rev. Code § 70.245.010 (same). Vermont specifies that "a bona fide physician–patient relationship with a patient *with a terminal condition* shall not be considered to have engaged in unprofessional conduct" under certain limited circumstances. 18 Vt. Stat. Ann. § 5289 (emphasis added). Oregon and Washington requires the attending physician to "[m]ake the initial determination of whether a patient has a terminal disease . . ." Or. Rev. Stat. 127.815 § 3.01; Wash. Rev. Code 70.245.040 (using identical language).[3]

[3] This does not mean to suggest that had Dr. Egbert complied with the other states' laws that his actions would be legal or professional in Maryland.

Dr. Egbert admitted by stipulation that none of the six patients whom he helped commit suicide had terminal diseases. Dr. Egbert's conduct towards non-terminal patients was not a mere administrative oversight. In FEN's first responder and exit guide training, FEN explained its approach to non-terminal patients as a feature of the FEN organization, explaining that FEN "was created specifically to take nonterminal as well as terminal cases." In a question and answer pamphlet, FEN claims to be "the only organization in the United States that will support individuals who are not 'terminally ill'" and explains "[n]o other organization in the US has the courage to make this commitment." Dr. Egbert's flagrant disregard for the common safeguards enacted by states that allow assisted suicides supports the conclusion that Dr. Egbert's actions are "conduct . . . unbecoming a member in good standing of a profession." *Finucan*, 380 Md. at 593.

III. DR. EGBERT'S ADDITIONAL EXCEPTIONS

A. Fraudulently Obtaining Medical Records

The ALJ's proposed decision concluded that Dr. Egbert improperly held himself out as a pain management physician in order to obtain patient medical records even though he had no intention of treating the patients' conditions. Dr. Egbert excepted to this conclusion. The Panel accepts Dr. Egbert's exception because no evidence in the record demonstrates that Dr. Egbert requested medical records from any physician, deceived any physician in order to obtain medical records, or that any medical records were directly transmitted to Dr. Egbert from another physician. The Panel, therefore, does not include these acts, for which there was no evidence, in the Board's determination of unprofessional conduct in the practice of medicine.

B. Admissibility of Newspaper Articles, Exhibits 1 and 3

Dr. Egbert objects to the admission into evidence of newspaper articles from the Baltimore Sun and Washington Post, Exhibits 1 and 3 respectively, because the articles contain unreliable hearsay and prejudicial hyperbole. The Panel concludes that the articles were properly admitted because they were relevant to the investigation and the issues raised in the charging documents. The panel, nevertheless, gives Exhibits 1 and 3 little weight based on their reliability limitations, and instead bases the Panel's opinion on the State's other evidentiary exhibits and testimony at the hearing and argument before the Board.

C. Admissibility of Dr. Silverman's Testimony

Dr. Egbert also excepts to the admission by the ALJ of Dr. Silverman's *curriculum vitae* and report based on the report's reliance on the AMA ethics opinion. Dr. Egbert claims that the AMA Code of Ethics was not adopted by the Panel and therefore cannot be applied to sanction a licensee. The Panel agrees with Dr. Egbert that the Panel is not *required* to adopt or consider the AMA's Ethics Opinion. Nor is the Panel required to accept the opinion of Dr. Silverman. The Panel may do so and chooses to do so here. The Board concludes that Dr. Silverman's expert report is relevant and its reliance on the AMA ethics opinion does not render it inadmissible. The Panel agrees with the State that unprofessional conduct expressly includes conduct that breaches rules or ethical codes of professional conduct. *Finucan*, 380 Md. at 593. *See also Salerian*, 176 Md. App. at 248.

CONCLUSIONS OF LAW

The Panel concludes that Dr. Egbert's actions, as described above, constitute unprofessional conduct in the practice of medicine, in violation of Health Occ. § 14-404(a)(3)(ii).

ORDER

Based on the foregoing Findings of Fact and Conclusions of Law, it is, by a majority of the quorum of Disciplinary Panel B hereby

ORDERED that the license of Lawrence D. Egbert, M.D., to practice medicine in Maryland is **REVOKED;** and it is further

ORDERED that this is a **PUBLIC** document pursuant to Md. Gen. Prov. Code Ann. §§ 4-101 to 4-601 (2014 Vol.)

12/12/2014
Date

Christine A. Farrelly
Christine A. Farrelly, Executive Director
Maryland State Board of Physicians

NOTICE OF RIGHT TO PETITION FOR JUDICIAL REVIEW

Pursuant to Md. Code Ann., Health Occ. § 14-408(a), Dr. Egbert has the right to seek judicial review of this Final Decision and Order. Any petition for judicial review shall be filed within thirty (30) days from the date of mailing of this Final Decision and Order. The cover letter accompanying this final decision and order indicates the date the decision is mailed. Any petition for judicial review shall be made as provided for in the Administrative Procedure Act, Md. Code Ann., State Gov't § 10-222 and Title 7, Chapter 200 of the Maryland Rules of Procedure.

If Dr. Egbert files a petition for judicial review, the Board is a party and should be served with the court's process at the following address:

Maryland State Board of Physicians
Christine A. Farrelly, Executive Director
4201 Patterson Avenue
Baltimore, Maryland 21215

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

David S. Finkler
Assistant Attorney General
Department of Health and Mental Hygiene
300 West Preston Street, Suite 302
Baltimore, Maryland 21201