

IN THE MATTER OF * BEFORE THE MARYLAND
JOSE L. LIZARDI, M.D. * STATE BOARD OF
Applicant for Initial Licensure * PHYSICIANS
* Case Number: 2223-0092B

* * * * *

**NOTICE OF INTENT TO DENY APPLICATION FOR INITIAL MEDICAL
LICENSURE UNDER THE MARYLAND MEDICAL PRACTICE ACT**

Disciplinary Panel B (“Panel B”) of the Maryland State Board of Physicians (the “Board”) hereby notifies **JOSE L. LIZARDI, M.D.** (the “Applicant”) of its intent to deny his *Application for Initial Medical Licensure*, dated August 22, 2022 (the “Application”), pursuant to the Maryland Medical Practice Act (the “Act”), Md. Code Ann., Health Occ. (“Health Occ.”) §§ 14-101 *et seq.* (2021 Repl. Vol. and 2022 Supp.); Health Occ. § 1-101 *et seq.* (2021 Repl. Vol. and 2022 Supp.); and Md. Code Regs. (“COMAR”) 10.32.17 *et seq.* (2019).

Panel B takes such action pursuant to the following statutory and regulatory provisions, which provide:

Health Occ. § 14-205. Miscellaneous powers and duties.

(b) Additional powers. –

...

(3) Subject to the Administrative Procedure Act and the hearing provisions of § 14-405 of this title, a disciplinary panel may deny a license to an applicant or, if an applicant has failed to renew the applicant’s license, refuse to renew or reinstate an applicant’s license for:

- (i) Any of the reasons that are grounds for action under § 14-404, § 14-5A-17, § 14-5B-14, § 14-5C-17, § 14-5D-14, § 14-5E-16, or § 14-5F-18 of this title, as applicable[.]

Health Occ. § 14-404. Denials, reprimands, probation, suspensions, and revocations – Grounds.

- (a) *In general.* – Subject to the hearing provisions of § 14-405 of this subtitle, a disciplinary panel, on the affirmative vote of a majority of the quorum of the disciplinary panel, 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;

...

- (11) Willfully make or files a false report or record in the practice of medicine;

...

- (21) Is disciplined by a licensing, certifying, or disciplinary authority or is convicted or disciplined by a court of any state or country or is disciplined by any branch of the United States uniformed services or the Veterans Administration for an act that would be grounds for disciplinary action under this section; [and]

...

- (43) Except for the licensure process described under Subtitle 3A of this title, violates any provision of this title, any rule or regulation adopted by the Board, or any State or federal law pertaining to the practice of medicine[.]

With respect to Health Occ. § 14-404(a)(21), acts that would be grounds for disciplinary action under Health Occ. § 14-404(a) include the following:

- (3) Is guilty of:
 - (i) Immoral conduct in the practice of medicine; or
 - (ii) Unprofessional conduct in the practice of medicine;
- (11) Willfully makes or files a false report or record in the practice of medicine; [and]
- (43) Except for the licensure process described under Subtitle 3A of this title, violates any provision of this title, any rule or regulation adopted by the Board, or any State or federal law pertaining to the practice of medicine[.]

Health Occ. § 14-307. Qualifications of applicants.

- (b) *Moral character.* – The applicant shall be of good moral character[.]

Health Occ. § 1-212. Sexual misconduct prohibited; regulations; discipline.

- (a) *Adoption of regulations.* – Each health care occupations board authorized to issue a license or certification under this article shall adopt regulations that:
 - (1) Prohibit sexual misconduct; and
 - (2) Provide for the discipline of a licensee or certificate holder found to be guilty of sexual misconduct.
- (b) *Sexual misconduct.* – For the purposes of the regulations adopted in accordance with subsection (a) of this section, “sexual misconduct” shall be construed to include, at a minimum, behavior where a health care provider:
 - (1) Has engaged in sexual behavior with a client or patient in the context of a professional evaluation, treatment,

procedure, or other service to the client or patient, regardless of the setting in which the professional service is provided;

- (2) Has engaged in sexual behavior with a client or patient under the pretense of diagnostic or therapeutic intent or benefit; or
- (3) Has engaged in any sexual behavior that would be considered unethical or unprofessional according to the code of ethics, professional standards of conduct, or regulations of the appropriate health occupations board under this article.

(c) *Violating board regulations.* – Subject to the provisions of the law governing contested cases, if an applicant . . . violates a regulation adopted under subsection (a) of this section a board may:

- (1) Deny a license . . . to the applicant[.]

COMAR 10.32.17. Sexual Misconduct

01. Scope.

This chapter prohibits sexual misconduct by health care practitioners.

02. Definitions.

B. Terms Defined.

...

(3) Sexual Contact.

- (a) “Sexual contact” means the knowing touching directly or through clothing, where the circumstances surrounding the touching would be construed by a reasonable person to be motivated by the health care practitioner’s own

prurient interest or for sexual arousal or gratification.

- (b) "Sexual contact" includes, but is not limited to:
 - (i) Sexual intercourse, genital to genital contact;
 - (ii) Oral to genital contact;
 - (iii) Oral to anal contact or genital to anal contact;
 - (iv) Kissing in a romantic or sexual manner; or
 - (v) Nonclinical touching of breasts, genitals, or any other sexualized body part.

(4) "Sexual harassment" means an unwelcome sexual advance, request for sexual favor, or other verbal or physical conduct of a sexual nature.

03. Sexual Misconduct.

- A. Health care practitioners may not engage in sexual misconduct.
- B. Health Occupations Article, §§ 14-404(a)(3) . . . Annotated Code of Maryland, includes, but is not limited to, sexual misconduct.
- C. Sexual misconduct includes, but is not limited to:
 - (1) Engaging in sexual harassment of a patient, key third party, employee, student, or coworker regardless of whether the sexual harassment occurs inside or outside of a professional setting;

...

- (4) Discussing the health care practitioner's sexual problems, sexual likes or dislikes, or fantasies;
- (5) Using the health care practitioner-patient relationship to initiate or solicit a dating, romantic, or sexual relationship;
- (6) Engaging in a dating, romantic, or sexual relationship which violates § D of this regulation or the code of ethics of the American Medical Association, American Osteopathic Association, American Psychiatric Association, or other professional code of ethics;
- (7) Participating in any form of sexual contact with a patient or key third party;
- (8) Having nonconsensual sexual contact with a coworker or employee;
- (9) Causing a patient or key third party to touch the health care practitioner's breasts, genitals, or any sexualized body part;
- ...
- (12) Exposing the health care practitioner's breasts, genitals, or any sexualized body part.

D. Sexual or romantic relationships. A health care practitioner may not engage in sexual behavior with:

- (1) A current patient[.]

ALLEGATIONS OF FACT¹

Panel B intends to deny the Applicant's Application based on the following facts that it has reasonable cause to believe are true:

Application for Licensure

1. On or about August 22, 2022, the Applicant submitted his Application to the Board. The Application required the Applicant to answer "YES" or "NO" to a series of questions that addressed his professional fitness and character. The Application further required the Applicant to provide an explanation for all affirmative responses to those questions.
2. The Application specifically requested that the Applicant address whether any licensing or disciplinary board filed any complaints or charges against him or investigated him for any reason. In response, the Applicant disclosed that the New York State Board of Physician Conduct (the "New York Board") suspended his New York medical license on two occasions.
3. The Applicant stated that his first prosecution occurred in or around 1983 after he "made the mistake of becoming romantically involved with two patients" and engaged in "irregularities in recordkeeping" that resulted in his prosecution for the "fraudulent practice of medicine." The Applicant stated that he was suspended from the practice of

¹ The allegations set forth in this document are intended to provide the Applicant with notice of Panel B's action. 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 Applicant in connection with this action.

medicine for one year, after which he was placed on probation for five years, subject to a series of probationary conditions.

4. The Applicant stated that his second prosecution occurred in or around 1994 when the Office of the Inspector General “raised questions about [his] transfer of two patients from one hospital to another.” The Applicant stated that his actions culminated in disciplinary action against him which included a two-year stayed suspension of his license and the imposition of a \$20,000 fine.

5. The Applicant denied responsibility for his misconduct, claiming that his settlement of the second action “should not be construed as an admission that my treatment of the two patients in question was inappropriate . . . [and that he] firmly believe[s] that the professional medical judgment [he] exercised in these two cases was proper.”

6. The Application also requested that the Applicant disclose whether any malpractice claims had ever been filed against him. In response, the Applicant stated that he was the subject of two malpractice actions. The Applicant stated that the first action, which involved an inappropriate management of a delivery occurring in 1996, resulted in a plaintiff’s verdict of \$3,152,572.90. The second action, which involved a failure to remove gauze packing after a delivery occurring in 2011, resulted in a negotiated settlement of \$15,000.

7. The Applicant further disclosed that he has pending applications for medical licensure in 25 other states.

Board Investigative Findings

8. The Board initiated an investigation of the Applicant's licensing and disciplinary history after reviewing the disclosures he made in the Application.

9. The Board's investigation revealed that on two occasions, the New York Board suspended the Applicant's New York medical license for reasons including sexual misconduct, gross negligence, making false medical reports/records in the practice of medicine, and for other professional improprieties.

10. The Board's investigation also determined that the Applicant was the subject of two medical malpractice claims that resulted in judgments against him and that he made one or more material misrepresentations in his Application. The Board's findings are set forth *infra*.

New York Board Consent Order, 1987

11. In or around 1987, the New York Board issued disciplinary charges against the Applicant consisting of 14 specifications of professional misconduct. The New York Board alleged, *inter alia*, that the Applicant:

- (a) while performing a pelvic examination on a patient in or around February 1983, sexually stimulated the patient without medical purpose, touched the patient's breasts and questioned her about her sexual activities;
- (b) while performing a gynecologic examination in or around July 1983, propositioned a patient, met with the patient at her house in August 1983 and had sexual relations with her, and examined the patient in September 1983 during which he spoke to her in an "obscene, threatening and disparaging manner";

- (c) in a medical record from in or around October 1984, falsified the findings of a physical examination for a female patient that he did not perform, and placed those findings in the patient's hospital record; and
- (d) in or around March 1985, falsely claimed that he was simultaneously working at two different hospitals at the same time.

12. The Applicant resolved the New York Board's charges by agreeing to a Consent Order dated December 14, 1987, in which the New York Board found as a matter of law that he: engaged in professional misconduct that evidenced a moral unfitness to practice, in violation of N.Y. Educ. Law § 6509(9) (McKinney 1985); N.Y. Admin. Code tit. 8, § 29.1(b)(5) (1981); failed to maintain an accurate medical record, in violation of N.Y. Educ. Law § 6509(9) (McKinney 1985); N.Y. Admin. Code tit. 8, § 29.2(a)(3) (1981); willfully harassed, abused, or intimidated a patient, either physically or verbally, in violation of N.Y. Educ. Law § 6509(9) (McKinney 1985); N.Y. Admin. Code tit. 8, § 29.1(a)(2) (1981); practiced medicine in a fraudulent manner, in violation of N.Y. Educ. Law § 6509(2) (McKinney 1985); and abandoned professional employment under circumstances that seriously impaired the delivery of professional care to patients, in violation of N.Y. Educ. Law § 6509(9) (McKinney 1985); N.Y. Admin. Code tit. 8, § 29.1(a)(1) (1981).

13. Under the terms of the 1987 Consent Order, the New York Board suspended the Applicant's New York medical license for six years, with all but one year of the suspension stayed; placed the Applicant on probation for five years, subject to terms and

conditions that included the Applicant's mandatory use of chaperones during examinations of female patients, and his entry into psychiatric or psychological therapy.

New York Board Consent Order, 1995

14. In or around 1995, the New York Board issued disciplinary charges against the Applicant, alleging that in 1992, he practiced medicine in a grossly negligent manner by failing to appropriately assess a pregnant patient, failing to perform an immediate exploratory laparotomy on the patient, and then transferring the patient to a distant hospital.

15. The Applicant resolved the New York Board's charges by agreeing to a Consent Order dated June 26, 1995, in which the New York Board found as a matter of law that the Applicant's actions constituted practicing medicine with gross negligence, in violation of N.Y. Educ. Law § 6530(4) (McKinney Supp. 1995). The 1995 Consent Order specifically states that the Applicant pleaded guilty to practicing with gross negligence.

16. Under the terms of the 1995 Consent Order, the New York Board issued a two-year stayed suspension against the Applicant's license and placed him on probation for three years, to run concurrently with his stayed suspension.

Malpractice history

17. The Board's investigation revealed that the Applicant was the subject of two malpractice actions, occurring in 1996 and 2011, respectively. The first action resulted in a plaintiff's verdict of \$3,152,572.90. The second action resulted in a negotiated settlement of \$15,000.

Material misrepresentations on the Application

18. The Board's investigation also revealed that the Applicant made one or more material misrepresentations with respect to the actions the New York Board took against him. The Applicant stated in his Application that he was disciplined for a "romantic" involvement with two patients. The 1987 New York Board Order, however, states that the Applicant engaged in sexual improprieties with two female patients during gynecologic examinations and willfully harassed, abused or intimidated one of the patients, either physically or verbally.

19. The Applicant also stated in his Application that his settlement of the 1995 action against him should not be construed as an admission that his treatment of patients was inappropriate. The 1995 New York Board Order, however, states that the Applicant willingly pleaded guilty to "practicing the profession of medicine with gross negligence."

Grounds for Denial of the Application

Grounds under Health Occ. § 14-404

20. Pursuant to Health Occ. § 14-205(b)(3)(i), a disciplinary panel of the Board may deny an applicant's application for licensure for any of the reasons that are grounds for action under Health Occ. § 14-404.

21. As stated above, the New York Board disciplined the Applicant on two occasions for professional misconduct for reasons including sexual misconduct, harassment, fraud, and gross negligence. These findings would constitute grounds for action under Health Occ. § 14-404.

22. Panel B intends to deny the Applicant's Application based on grounds under the following provisions of Health Occ. § 14-404(a): (3) Is guilty of: (i) Immoral conduct in the practice of medicine; and (ii) Unprofessional conduct in the practice of medicine; (11) Willfully makes or files a false report or record in the practice of medicine; (21) Is disciplined a licensing or disciplinary authority . . . for an act that would be grounds for action under this section [Health Occ. § 14-404]; and (43) Except for the licensure process described under Subtitle 3A of this title, violates any rule or regulation adopted by the Board, or any State or federal law pertaining to the practice of medicine.

23. With respect to Health Occ. § 14-404(a)(21), acts that would be grounds for action under Health Occ. § 14-404 include: (3) Is guilty of: (i) Immoral conduct in the practice of medicine; and (ii) Unprofessional conduct in the practice of medicine; (11) Willfully makes or files a false report or record in the practice of medicine; and (43) Except for the licensure process described under Subtitle 3A of this title, violates any rule or regulation adopted by the Board, or any State or federal law pertaining to the practice of medicine.

24. With respect to Health Occ. § 14-404(a)(43), Panel B intends to deny the Applicant's Application in that he violated the Board's sexual misconduct regulations under COMAR 10.32.17 *et seq.*

Grounds under Health Occ. § 1-212

25. A disciplinary panel of the Board may deny an applicant's application for licensure if the applicant violates a regulation adopted under Health Occ. § 1-212(a).

26. The Board promulgated sexual misconduct regulations under COMAR 10.32.17.01 *et seq.* pursuant to the authority granted under Health Occ. § 1-212(a).

27. The Applicant's actions, which included sexual contact with, and harassment of, female patients, constitute a violation of the Board's sexual misconduct regulations under COMAR 10.32.17.01 *et seq.*

28. Panel B intends to deny the Applicant's Application in that he violated the Board's sexual misconduct regulations.

Grounds under Health Occ. § 14-307

29. A disciplinary panel of the Board may deny an applicant's application for licensure if the applicant does not possess good moral character. Health Occ. § 14-307(b).

30. As set forth above, the New York Board disciplined the Applicant on two occasions for unprofessional conduct that resulted in suspensions of his medical license. The New York Board found that the Applicant engaged in professional misconduct that included: engaging in professional misconduct that evidences a moral unfitness to practice; failing to maintain an accurate medical record; willfully harassing, abusing or intimidating a patient, either physically or verbally; practicing medicine in a fraudulent manner; abandoning professional employment under circumstances that seriously impaired the delivery of professional care to patients; and practicing medicine with gross negligence.

31. The Applicant's actions, as set forth above, constitute, in whole or in part, a lack of good moral character, which constitutes a basis for a disciplinary panel to deny his

Application. Health Occ. § 14-307(b). Panel B intends to deny the Applicant's Application on this basis.

NOTICE OF AN OPPORTUNITY FOR A HEARING

In accordance with the Administrative Procedure Act, Md. Code Ann., State Gov't §§ 10-201 *et seq.* (2021 Repl. Vol. and 2022 Supp.), Panel B hereby notifies the Applicant of his opportunity for a hearing before Panel A makes a final decision in this case. The Applicant must request a hearing **WITHIN THIRTY (30) DAYS** of the date of this notice. The request for a hearing must be made in writing to:


Christine A. Farrelly
Executive Director
Maryland State Board of Physicians
4201 Patterson Avenue, 4th Floor
Baltimore, Maryland 21215-0095
Phone: (410) 764-4771; Fax: (410) 358-2252

If a request for a hearing is made, a conference will be scheduled before Panel B, sitting as a Disciplinary Committee for Case Resolution of the Board. In addition, a prehearing conference and a hearing before an Administrative Law Judge will be scheduled.

If Panel B does not receive a written request for a hearing within **thirty (30) days** from the date of this notice, it will sign the attached Final Order.

ANTHONY G. BROWN
Attorney General of Maryland

May 5, 2023
Date


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