

IN THE MATTER OF
DAVID N. SMITH, M.D.

Applicant

License Number: D90614 (Expired)

*** BEFORE THE**
*** MARYLAND STATE**
*** BOARD OF PHYSICIANS**
*** Case Number: 2223-0081A**

* * * * *

ORDER OF DEFAULT

On April 19, 2023, Disciplinary Panel A of the Maryland State Board of Physicians (“Board”) issued a Notice of Intent to Deny Application for Reinstatement of Medical License to David N. Smith, pursuant to Md. Code Ann., Health Occ. §14-205(b)(3)(i), which provides that “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 . . . of this title . . . [.]” The ground for disciplinary action is that Dr. Smith was disciplined by a licensing or disciplinary authority of another State for an act that would be grounds for disciplinary action in Maryland. Health Occ. §14-404(a)(21). The reciprocal disciplinary grounds in Maryland include unprofessional conduct in the practice of medicine, *see* Health Occ. §14-404(a)(3)(ii); and practicing medicine with an unauthorized person or aiding an unauthorized person in the practice of medicine, *see* Health Occ. §14-404(a)(18).

On August 9, 2023, the case was referred to the Office of Administrative Hearings (“OAH”) for an evidentiary hearing. On August 24, 2023, OAH sent a notice to the parties that a scheduling conference would be held on October 16, 2023, at 9:30 a.m., by video-conference. The scheduling notice was sent to Dr. Smith at his address of record. On October 16, 2023, the Administrative Law Judge (“ALJ”) commenced the scheduling conference by video-conference. The administrative prosecutor appeared on behalf of the State. Dr. Smith did not appear, nor did

anyone appear on his behalf. The notice was sent to Dr. Smith at his address of record, the notice was not returned as undeliverable, and there was neither a request for postponement nor any communication from Dr. Smith.

Following the scheduling conference, on October 16, 2023, OAH sent a Notice of Prehearing Conference to the parties that notified the parties that a prehearing conference would be held on November 14, 2023, at 9:30 a.m., by video-conference. The Notice of Prehearing Conference informed Dr. Smith that the failure to appear or to give timely notice of his inability to appear at the prehearing conference could result in a decision against him. None of the hearing notices or correspondence were returned to OAH as undeliverable.

On October 16, 2023, the State submitted its prehearing conference statement. Dr. Smith did not submit any prehearing conference statement or exhibits. On November 14, 2023, the ALJ held the remote prehearing conference. The administrative prosecutor appeared on behalf of the State. Dr. Smith did not appear. After waiting for more than fifteen minutes, the ALJ commenced the prehearing conference. The ALJ noted that none of the notices or correspondence were returned as undeliverable and there was neither a request for postponement filed nor any other communication from Dr. Smith. The ALJ, thus, concluded that Dr. Smith received proper notice of the prehearing conference, and the State made a motion for a proposed default order.

Under OAH's rules of procedure, "[i]f, after receiving proper notice as provided in Regulation .05C of this chapter, a party fails to attend or participate, either personally or through a representative, in a prehearing conference, hearing, or other stage of a proceeding, the ALJ may proceed in that party's absence or may, in accordance with the hearing authority delegated by the agency, issue a final or proposed default order against the defaulting party." COMAR 28.02.01.23A.

On November 16, 2023, the ALJ issued a Proposed Default Order. The ALJ found that Dr. Smith had proper notice of the November 14, 2023 video prehearing conference and that he failed to appear or participate. The ALJ proposed that the Panel find Dr. Smith in default and deny Dr. Smith's application for the reinstatement of his license to practice medicine.

The ALJ mailed copies of the Proposed Default Order to Dr. Smith, the administrative prosecutor, and the Board at the parties' respective addresses of record. The Proposed Default Order notified the parties that they may file written exceptions to the proposed order but must do so within 15 days of the date of the Proposed Default Order. The Proposed Default Order stated that any exceptions and requests for a hearing must be sent to the Board with a copy provided to the opposing party. On November 28, 2023, the Board sent Dr. Smith a separate letter by email and regular mail informing him of his right to file exceptions. None of the correspondence was returned as undeliverable and neither party filed exceptions. On January 24, 2024, this case came before Disciplinary Panel B ("Panel B") of the Board for final disposition.

FINDINGS OF FACT

Because Panel B concludes that Dr. Smith has defaulted and has not filed exceptions to the ALJ's Proposed Default Order, the following findings of fact are adopted from the allegations of fact in the April 19, 2023 Notice of Intent to Deny Application for Reinstatement of Medical License and are deemed proven by the preponderance of the evidence:

Licensing information/Application for Reinstatement

1. The Board issued a medical license to Dr. Smith on December 8, 2020, under License Number D90614. Dr. Smith failed to renew his medical license during the 2021 renewal period. Consequently, Dr. Smith's license expired, effective September 30, 2021.

2. Dr. Smith has been or is currently licensed to practice medicine in several other states, including North Carolina, Virginia, Kentucky, Hawaii, Wyoming, Tennessee, South Carolina, Georgia, Florida, and Connecticut.

3. In or around September 2022, Dr. Smith submitted his Application for Reinstatement (“Application”) to the Board. The Board received Dr. Smith’s Application on or about September 14, 2022.

4. The Application required Dr. Smith to answer “YES” or “NO” to a series of questions that addressed his character and professional fitness. The Application specifically required Dr. Smith to provide written explanations for all “YES” responses.

5. Dr. Smith answered “YES” to the following questions:

Question 13B. Has a state licensing or disciplinary board (including Maryland), a comparable body in the armed forces or the Veterans’ Administration, taken action against your license? Such actions include, but are not limited to, limitations of practice, required education admonishment or reprimand, suspension or revocation.

Question 13C. Has any licensing or disciplinary board in any jurisdiction (including Maryland), filed any complaints or charges against you or investigated you for any reason?

6. Dr. Smith did not sign or date the Application or provide written explanations for his affirmative responses.

7. After reviewing the Application, the Board notified Dr. Smith that he did not sign or date the Application or provide written explanations for his affirmative responses to the above questions.

8. In emails to the Board, sent on or about February 21, 2023, Dr. Smith responded, stating that the medical boards of several states had taken disciplinary action against him due to

“operational flaws” that he claimed caused delays in communicating with patients and providing timely responses to records requests.

Board Investigation

9. After receiving this information, the Board investigated Dr. Smith’s licensing and disciplinary history. The Board’s investigation determined that the medical boards of several states have taken disciplinary action against Dr. Smith, with sanctions including suspension and revocation of licensure. These actions include the following:

North Carolina Medical Board

10. On or about July 19, 2021, Dr. Smith entered into a Consent Order with the North Carolina Medical Board (“NCMB”) in which he admitted the following finding of facts:

Dr. Smith owns Premier Cardiology in Charlotte. The practice was managed by an outside entity and employed a nurse practitioner (“NP”). In the Spring of 2019, the NCMB received complaints that the NP became the only clinician consistently present at the practice seeing patients and that Dr. Smith was neglecting the practice. The allegations of neglect included a patient not being informed of diagnostic test results. In addition to not informing the patient or her primary care physician of the test results, Dr. Smith reportedly failed to follow up on these diagnostic studies and formulate a treatment plan in response to the test results. When the patient attempted to contact Dr. Smith to learn of test results, she was either unable to reach him or unable to leave messages on his voicemail. The Board received other complaints from patients being unable to reach Dr. Smith despite numerous phone calls.

During this period of time, Dr. Smith accepted other employment, including becoming the registered owner and Medical Director of Dynamic Health (a practice ostensibly owned by a chiropractor which offered integrative medicine therapies), a low testosterone clinic, and an opioid use disorder treatment or “Suboxone” clinic. Dr. Smith also accepted locum tenens assignments, some of which were out of state. These additional practices and work assignments together contributed to Dr. Smith’s lack of presence at Premier Cardiology.

The employed NP who was left running Premier Cardiology received little supervision from Dr. Smith. Admission orders and other necessary documents went unsigned by Dr. Smith, causing the practice to lose revenue. The NP and other staff employed by Premier Cardiology’s outside management company

reported that by the end of their employment at Premier Cardiology, they were essentially working without pay.

In 2019, Dr. Smith became the owner of the aforementioned Dynamic Health Medical Group, PLLC. Dynamic Health markets itself as an anti-aging medical practice. Dynamic Health & Pain Management was the subject of a prior Board investigation for violating the Corporate Practice of Medicine Doctrine. As a general rule, with few exceptions none of which are applicable here, medical practices must be owned by licensees of the Board. Dynamic Health attempts to circumvent the rule of physician ownership by setting up a physician as a “straw owner.” A “straw owner” has no control over the practice, does not enjoy the profits of the practice, does not control the revenue of the practice, and cannot sell his or her ownership interest in the practice without the permission from the *de facto* lay owner, who in this case was Peter Cox, DC. A medical practice which follows the straw owner model of health care generally relies on advanced practice practitioners (“APP”), primarily physician assistants and nurse practitioners, to provide direct care to patients. The physician straw owner of the practice also serves as the primary supervising physician for the APPs and usually is not on site at the practice. Dr. Smith was reported to be rarely at the practice despite being the primary supervision physician for the APPs employed by Dynamic Health.

Not only did Dr. Smith agree to supervise the APPs at Dynamic Health, but he also supervised multiple APPs at the low testosterone clinic as well as his Suboxone clinic. Interviews of those APPs confirmed a similar pattern of Dr. Smith rarely being present at the clinics and that he provided little supervision of the APPs who provided direct patient care.

11. The NCMB concluded as a matter of law that under N.C. Gen. Stat. § 90-14(a)(6), Dr. Smith’s actions constituted unprofessional conduct that included but was not limited to a “departure from, or the failure to conform to the ethics of the medical profession, or good morals.”

12. Under the Consent Order, the NCMB suspended Dr. Smith’s North Carolina medical license for two years, which it stayed, subject to certain terms and conditions, including: requiring Dr. Smith to participate in a NCMB-approved executive coaching program; restricting Dr. Smith’s practice to a hospital or group practice setting, subject to practice monitoring; barring Dr. Smith’s ownership or operation of his own practice or acting as the medical director of a practice; and barring Dr. Smith from acting as the primary supervision physician for any APP.

13. On or about October 15, 2021, the NCMB issued an Amended Consent Order after Dr. Smith requested clarification of the practice monitor requirement condition imposed under the July 19, 2021, Consent Order. Under the Amended Consent Order, the NCMB provided further details regarding this requirement and continued all other sanctions and terms and conditions that were required under the July 29, 2021, Consent Order.

14. On or about February 24, 2023, the NCMB issued an order titled, Partial Relief of Consent Order Obligations, in which it relieved Dr. Smith of further compliance with its executive coaching program, while continuing all other remaining conditions that were required under the July 19, 2021, Consent Order.

Virginia Department of Health Professions

15. On or about August 30, 2021, the Virginia Department of Health Professions (the “VDHP”), pursuant to an Order of Mandatory Suspension, suspended Dr. Smith’s Virginia medical license after receiving evidence that the NCMB suspended the Applicant’s North Carolina medical license. The VDHP advised Dr. Smith that pursuant to the Order of Mandatory Suspension, he may not practice medicine or hold himself out as a licensed physician unless and until the Virginia Board of Medicine notified him in writing that his license has been reinstated.

16. Dr. Smith’s Virginia medical license continues to remain in a state of suspension.

Kentucky Board of Medical Licensure

17. On or about November 4, 2021, the Kentucky Board of Medical Licensure (the “KBML”), pursuant to KRS 13B.125(2), issued an Emergency Order of Restriction, in which it prohibited Dr. Smith from practicing medicine in Kentucky. The KBML took such action after receiving evidence that the NCMB disciplined Dr. Smith and that Dr. Smith failed to report the action to the KBML within ten days, as required under 201 KAR 9:081.

18. On or about November 4, 2021, the KBML issued disciplinary charges against Dr. Smith, alleging that he violated the following provisions of the Kentucky Medical Practice Act: KRS 311.595(12) (assisting in or abetting the violation of the medical practice act); and KRS 311:595(17) (medical license has been revoked, suspended, restricted, or limited in another state).

19. Dr. Smith failed to file a response to the KBML's disciplinary charges, as required under KRS 311.591(4), and was determined to be in default.

20. On or about March 21, 2022, the KBML issued an Order of Revocation in which it revoked Dr. Smith's Kentucky medical license based on the above disciplinary charges.

CONCLUSIONS OF LAW

Panel B finds Dr. Smith in default based upon his failure to appear at OAH for the video prehearing conference scheduled for November 14, 2023. *See* Md. Code Ann., State Gov't § 10-210(4). Based upon the foregoing findings of fact, Panel B concludes that Dr. Smith was disciplined by a licensing or disciplinary authority for an act that would be grounds for disciplinary action under this section. Health Occ. §14-404(a)(21). The grounds underlying the reciprocal disciplinary action in Maryland include that Dr. Smith is guilty of unprofessional conduct in the practice of medicine, in violation of Health Occ. §14-404(a)(3)(ii); and that Dr. Smith practiced medicine with an unauthorized person or aiding an unauthorized person in the practice of medicine, in violation of Health Occ. §14-404(a)(18). Thus, the denial of Dr. Smith's reinstatement application is authorized, under Health Occ. § 14-205(b)(3)(i).

SANCTION

Panel B adopts the sanction recommended by the ALJ to deny Dr. Smith's application for reinstatement of his license to practice medicine in Maryland.

ORDER

It is, on the affirmative vote of a majority of the quorum of Panel B, hereby

ORDERED that the Application for Reinstatement of License to Practice Medicine of David N. Smith, M.D. to practice medicine in Maryland is **DENIED**; and it is further

ORDERED that this is a public document. *See* Health Occ. §§ 1-607, 14-411.1(b)(2), and Md. Code Ann., Gen. Prov. § 4-333(b)(6).

02/01/2024
Date

Signature On File

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, Dr. Smith has the right to seek judicial review of this Order of Default. Any petition for judicial review shall be filed within thirty (30) days from the date of mailing of this Order of Default. The cover letter accompanying this Order indicates the date the decision was 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. Smith 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:

**Stacey Darin
Assistant Attorney General
Maryland Department of Health
300 West Preston Street, Suite 302
Baltimore, Maryland 21201**