IN THE MATTER OF	*	BEFORE THE
ADAOBI S. UDEOZOR, M.D.	*	MARYLAND STATE BOARD
Applicant	*	OF PHYSICIANS
	*	Case Number: 2218-0006B

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

FINAL DECISION AND ORDER

On December 20, 2016, Adaobi S. Udeozor, M.D. (the "Applicant") filed an application with the Maryland State Board of Physicians (the "Board") requesting the reinstatement of her medical license after the expiration of her license. On February 12, 2018, Board Disciplinary Panel B issued a Notice of Intent to Deny Reinstatement of License under the Maryland Medical Practice Act, which notified the Applicant that it intended to deny her application, pursuant to Health Occ. § 14-205(b)(3)(i), Maryland Code Annotated, which authorizes the denial of an application for reinstatement based upon any of the reasons that are grounds for action under Health Occ. § 14-404. The notice alleged that the Applicant had engaged in unprofessional conduct in the practice of medicine, in violation of Health Occ. § 14-404(a)(3)(ii).

On October 29 and 30, 2018, pursuant to Health Occ. § 14-405, an evidentiary hearing was held at the Office of Administrative Hearings. On January 17, 2019, the Administrative Law Judge ("ALJ") issued a proposed decision, concluding that the Applicant was guilty of unprofessional conduct in the practice of medicine, *see* Health Occ. § 14-404(a)(3)(ii), and, thus, the ALJ recommended that the Notice of Intent to Deny Reinstatement of License under the Maryland Medical Practice Act be upheld.[1]

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[1] On page 3 of the ALJ's proposed decision, the ALJ states that he admitted into evidence certain exhibits on behalf of the "Board." The ALJ, however, admitted those exhibits on behalf of the "State." Thus, the exhibits at issue (ALJ's proposed decision at pages 3-4) are "State" exhibits 1-16, and not, as the ALJ indicated, "Bd." exhibits 1-16. Additionally, on page five of the ALJ's proposed decision, the ALJ stated that the "Respondent" testified on her own behalf. Panel A finds that the ALJ meant to state that the "Applicant" testified on her own behalf.

Neither the Applicant nor the State filed exceptions to the ALJ's proposed decision.

FINDINGS OF FACT

Board Disciplinary Panel A ("Panel A") adopts the ALJ's Proposed Undisputed Findings of Fact (numbered 1-9, ALJ's Proposed Decision at pages 5-6), Proposed Findings of Fact (numbered 1-23, ALJ's Proposed Decision at pages 6-9), and Discussion (ALJ's Proposed Decision at pages 9-22), which are incorporated by reference into this Final Decision and Order as if set forth in full. The ALJ's proposed decision is attached as **Exhibit 1.**[2] The factual findings were proven by the preponderance of evidence.

CONCLUSIONS OF LAW

Panel A concludes that the Applicant is guilty of unprofessional conduct in the practice of medicine, in violation of Health Occ. § 14-404(a)(3)(ii), and thus there is authorization for Panel A to refuse to reinstate of the Applicant's license to practice medicine after her failure to renew her license, under Health Occ. § 14-205(b)(3)(i).

Denial of Application

The ALJ recommended that the Applicant's application for the reinstatement of her medical license be denied. Panel A finds that the denial of the Applicant's application is warranted and adopts the ALJ's recommended disposition.

ORDER

It is, thus, pursuant to Health Occ. § 14-205(b)(3)(i), by Panel A, hereby

ORDERED that Panel A refuses to reinstate the Applicant Adaobi S. Udeozor, M.D.'s license to practice medicine in Maryland, and, thus, the Applicant's application, filed with the

[2] Panel A has redacted the names of certain individuals from the version of the ALJ's proposed decision available to public to protect their privacy and confidentiality.

Board, on December 20, 2016, for the reinstatement of her license to practice medicine in Maryland is **DENIED;** and it is further

ORDERED that this is a public document.

04/05/2019
Date

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

NOTICE OF OPPORTUNITY TO APPEAL

Pursuant to § 14-408(a) of the Health Occupations Article, Dr. Udeozor has the right to petition for judicial review of this Final Decision and Order. Any petition for judicial review must be filed within 30 days from the date this Final Decision and Order was sent to the Applicant. The petition for judicial review must be made as directed in the Maryland Administrative Procedure Act, Md. Code Ann., State Gov't § 10-222, and Maryland Rules 7-201 *et seq.*

If Dr. Udeozor petitions for judicial review, the Board is a party and should be served with the court's process. In addition, Dr. Udeozor should send a copy of her petition for judicial review to the Board's counsel, David Wagner, Assistant Attorney General, Office of the Attorney General, 300 W. Preston Street, Suite 302, Baltimore, Maryland 21201. The administrative prosecutor is not involved in the circuit court process and does not need to be served or copied on pleadings filed in circuit court.

Exhibit 1

MARYLAND STATE	*	BEFORE STUART G. BRESLOW,
BOARD OF PHYSICIANS	*	AN ADMINISTRATIVE LAW JUDGE
v.	*	OF THE MARYLAND OFFICE
ADOABI S. UDEOZOR, M.D.,	*	OF ADMINISTRATIVE HEARINGS
APPLICANT	*	
LICENSE No.: D41987 (EXPIRED)	*	OAH No.: MDH-MBP1-70-18-16487

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

PROPOSED DECISION

STATEMENT OF THE CASE
ISSUE
SUMMARY OF THE EVIDENCE
PROPOSED UNDISPUTED FINDINGS OF FACT
PROPOSED FINDINGS OF FACT
DISCUSSION
PROPOSED CONCLUSION OF LAW
PROPOSED DISPOSITION

On February 12, 2018, the Maryland State Board of Physicians (Board) notified Adoabi S. Udeozor, M.D. (Applicant) of its intent to deny her application for Reinstatement of her License to Practice Medicine (Application) pursuant to the State law governing the practice of medicine. Md. Code Ann., Health Occ. §§ 14-101 *et seq.* (2014 & Supp. 2018). The Board based its intent to deny the Application on its authority under section 14-205 of the Health Occupations Article; specifically, it found that the Applicant violated section 14-404 of the Health Occupations Article. *Id.* § 14-205(b)(3)(i) (Supp. 2018); *id.* § 14-404(a)(3)(ii) (engaging in unprofessional conduct in the practice of medicine).

On May 23, 2018, the Board delegated the matter to the Office of Administrative Hearings (OAH) for a hearing on the Board's intent to deny the Applicant's Application. The Board further delegated the authority to the OAH to issue Proposed Findings of Fact, Proposed Conclusion(s) of Law, and a Proposed Disposition.

On June 18, 2018, I issued a Scheduling Order following an in-person scheduling conference (Conference) that occurred on June 15, 2018 at the OAH headquarters in Hunt Valley, Maryland. Dawn Rubin, Assistant Attorney General, appeared on behalf of the State of Maryland (State). Matthew H. Simmons, Esquire, appeared on behalf of the Applicant, who was not present. At the Conference, each party indicated their intention to file a dispositive motion. I ordered that dispositive motions must be filed no later than the close of business on September 7, 2018. On August 28, 2018, the State submitted a Motion for Summary Decision (Motion). On September 7, 2018, the Applicant filed her Cross-Motion for Summary Decision[1] (Cross-Motion). On September 13, 2018, the Applicant filed her Response to the Motion. On September 17, 2018, the State filed its Response to the Cross-Motion. I held a hearing on the Motion and Cross-Motion on September 27, 2018.

On October 18, 2018, I issued a Proposed Ruling on the Motion and Cross-Motion in which I denied both the Motion and Cross-Motion and ordered that the contested case hearing scheduled for October 29 and October 30, 2018 proceed as scheduled.

On October 29 and 30, 2018, I held a contested case hearing at the OAH. Health Occ. § 14-405(a) (Supp. 2018); COMAR 10.32.02.04. Matthew Simmons, Esquire, represented the Applicant, who was present. Dawn Rubin, Assistant Attorney General and Administrative Prosecutor, represented the State. I closed the record on October 30, 2018.

Procedure in this case is governed by the contested case provisions of the Administrative Procedure Act, the Rules for Hearings before the Board of Physicians, and the Rules of Procedure of the OAH. Md. Code Ann., State Gov't §§ 10-201 through 10-226 (2014 & Supp. 2018); COMAR 10.32.02; and COMAR 28.02.01.

[1] The Applicant titled her motion as Applicant's Motion for Summary Ruling. I changed the title to Cross-Motion for Summary Decision to avoid confusion.

ISSUE

Whether or not the State has a basis to deny the Applicant a license to practice medicine in the State as a result of the disciplinary panel's denial on the basis of section 14-404(a)(3)(ii) of the Health Occupations Article of the Annotated Code of Maryland.

SUMMARY OF THE EVIDENCE

Exhibits

I admitted the following exhibits into evidence on behalf of the Board:

Bd. Ex. 1 - Notice of Intent to Deny Reinstatement of License under the Maryland Medical Practice Act, dated February 12, 2018

Bd. Ex. 2 - Board of Physician Quality Assurance, Endorsement/Flex Application, dated March 21, 1990

Bd. Ex. 3 - Order issued by the Circuit Court for Montgomery County, Civil Case No. 279138, entered August 29, 2007

Bd. Ex. 4 - Application for Reinstatement of Medical License, received December 20, 2016

Bd. Ex. 5 - Letter from Lily Schmulowitz, Compliance Analyst Associate; Maryland Board of Physicians, to Applicant, dated October 5, 2017

Bd. Ex. 6 - Letter from Applicant to Lily Schmulowitz, dated October 11, 2017

Bd. Ex. 7 - Letter from Matt Simmons, Esquire, to Christine Farrelly, Executive Director, Maryland Board of Physicians, dated October 25, 2017

Bd. Ex. 8 - USA v. Udeozor, et al, Criminal Docket for Case #8:03-cr-00470-PJM-1

Bd. Ex. 9 - Superseding Indictment, USA v. Udeozor, et al, Criminal No. PJM-03-0470, entered by the Clerk of the U.S. District Court on November 12, 2003

Bd. Ex. 10 - Transcript from the case of USA v. Udeozor, et al, Criminal Docket for Case #8:03-cr-00470-PJM-1, pp. 1-219, dated October 8, 2004

Bd. Ex. 11 - Transcript from the case of USA v. Udeozor, et al, Criminal Docket for Case #8:03-cr-00470-PJM-1, pp. 1-155, dated October 12, 2004

Bd. Ex. 12 - Transcript from the case of USA v. Udeozor, et al, Criminal Docket for Case #8:03-cr-00470-PJM-1, pp. 1-50, dated October 13, 2004

Bd. Ex. 13 - Special Findings, dated October 18, 2004

Bd. Ex. 14 - USA v. Udeozor, et al, Criminal Docket for Case #8:03-cr-00470-PJM-1, Judgment in Criminal Case, issued April 21, 2006

Bd. Ex. 15 - Withdrawn

Bd. Ex. 16 - USA v. Udeozor, PJM-03-0470, Transcript of Sentencing Hearing before the Honorable Peter M. Messitte, held April 18, 2006

I admitted the following exhibits into evidence on behalf of the Applicant:

App. Ex. 1 - Petition for Judicial Review, in the Circuit Court for Montgomery County, Maryland, filed January 29, 2007

App. Ex. 2 - Not admitted

App. Ex. 3 - Not admitted

App. Ex. 4 - Not admitted

App. Ex. 5 - Order of the Circuit Court for Montgomery County, Maryland, Civil Case No. 279138-V, entered August 29, 2007

App. Ex. 6 - Verdict Form, Special Findings, Jury note, entered November 18, 2004 in the United States District Court for the District of Maryland, PJM-03-0470

App. Ex. 7 - Letter from Matt Simmons to the Reinstatement of Medical Licensure Unit of the Board of Physicians, dated March 4, 2015

App. Ex. 8 - Letter from the Board of Physicians to the Applicant, dated April 30, 2015

App. Ex. 9 - Letter from Dierdra Rufus, Supervisor, Licensure Unit, Board of Physicians, to Applicant, dated December 3, 2015

App. Ex. 10 - Letter from Lily Schmulowitz, Compliance Analyst, to the Applicant, dated October 5, 2017

App. Ex. 11 - No document submitted in tab 11

App. Ex. 12 - Letter from Applicant to Lily Schmulowitz, referencing signed Authorization for Release of Information

App. Ex. 13 - Letter from Matt Simmons to Christine Farrelly, dated December 13, 2017

Testimony

Lily Schmulowitz, Compliance Analyst Associate, Board, testified on behalf of the Board.

The Respondent testified in her own behalf, and presented the following witnesses:

[redacted], homemaker

[redacted], [redacted] of the Applicant

PROPOSED UNDISPUTED FINDINGS OF FACT

1. The Applicant was licensed to practice medicine in Maryland on or about July 1, 1991.

2. The Applicant's license to practice medicine expired on or about September 30, 2007.

3. On November 18, 2004, the Applicant was convicted in the United States District Court for the District of Maryland of conspiracy in violation of 18 U.S.C.A. § 371. She was also convicted of violating 8 U.S.C.A. § 1324(a)(1)(A)(iii) and (B)(i):

> [k]nowing and in reckless disregard of the fact that a juvenile alien had come to, entered and remained in the United States in violation of law, attempted to and did harbor the juvenile alien in a place, specifically, the defendant's residence in the District of Maryland, and did so for the purpose of commercial advantage and private financial gain.

4. The Applicant was found not guilty of violating 18 U.S.C.A. § 1584 "knowingly and willfully holding a juvenile alien to involuntary servitude for a term."

5. As a result of her convictions, the Applicant was sentenced to 87 months' imprisonment and ordered to pay $110,249.60 in restitution.

6. The Applicant was incarcerated from June 2006 through September 2012.

7. On or about December 29, 2006, the Board of Physicians suspended the Applicant's license to practice medicine based on a finding that she had been convicted of a crime involving moral turpitude by the United States District Court for the District of Maryland.

8. The Applicant appealed the decision of the Board of Physicians, and, on or about August 14, 2007, the Circuit Court reversed the Board of Physicians' decision, without prejudice, and allowed the Board of Physicians to refile.

9. The Applicant appealed her convictions to the United States Court of Appeals for the Fourth Circuit (Fourth Circuit) and on February 1, 2008, the Fourth Circuit affirmed the District Court's convictions of the Applicant.

PROPOSED FINDINGS OF FACT

Having considered all of the evidence presented, I find the following facts by a preponderance of the evidence:

1. The Applicant allowed her license to practice medicine to expire on September 30, 2007, while she was incarcerated.
2. Four years following the Applicant's release from prison, the Applicant filed an application with the Board to reinstate her license to practice medicine on December 20, 2016.
3. Her application was assigned to Lily Schmulowitz, Compliance Analyst Associate, for the Board. Ms. Schmulowitz is responsible for investigating cases on behalf of the intake department of the Board. Her duties include medical education investigations, intent to deny applications for licensure, crimes of moral turpitude, unlicensed practice of medicine, and other administrative duties.
4. Ms. Schmulowitz was assigned the Applicant's case in July 2017.
5. The Applicant had filed two previous applications for reinstatement of her medical license, which were denied for failing to meet the standard requirements for licensure, including passing the medical licensing exam.
6. The Applicant has since met the basic requirements for licensure including passing the medical licensing exam.

7. Having met the basic licensing requirements, the Applicant was informed that her application for reinstatement may be approved by the Board.

8. The Board was provided with numerous documents to consider before deciding whether to approve the Applicant for licensure. Included in these documents were transcripts of the direct and cross-examination testimony of [redacted][2] and [redacted] during the Applicant's criminal trial before the United States District Court for the District of Maryland.

9. Ms. Schmulowitz did not meet or interview the Applicant as part of her investigation and was not required to do so.

10. At the conclusion of her investigation, Ms. Schmulowitz provided the information she obtained to the Board. Ms. Schmulowitz did not take part in discussions to either approve or disapprove the Applicant's reinstatement application.

11. In October 1996, [redacted] a fourteen year old girl, was brought to the United States from Nigeria by the Applicant's ex-husband, George Udeozor, to live in the Applicant's household. She stayed through October 2001.

12. [redacted] entered the United States on a passport issued to [redacted]. The Applicant knew that [redacted] entered the United States illegally.

13. [redacted] is one of the Applicant's [redacted].

14. In October 1997, [redacted] started working in the Applicant's medical office. While working at the Applicant's medical office, [redacted] would verify insurance information, reschedule patients, answer the phone, get a patient's chart ready, clean out the examination room, and put the patient in the room while waiting to see the Applicant.

[2] [redacted] was the child brought to this country from Nigeria by the Applicant's ex-husband, George Udeozor. She lived in the Applicant's home until she left in October 2001.

15. [redacted] did not attend school during her entire stay with the Udeozor family. When people asked why [redacted] was not in school, [redacted] was told by the Applicant to tell them that she was the Applicant's adopted daughter, which the Applicant knew to be false.

16. [redacted] was never enrolled in either public or private school.

17. The medical office work performed by [redacted] was in addition to cleaning the Applicant's house, preparing lunches for the Applicant's other children to eat at school, and assisting with laundry and other household chores. She was not paid for performing any household chores.

18. [redacted] took care of [redacted], the Applicant's [redacted]

19. The Applicant's children also worked in the Applicant's medical office during summer months when they were no longer in school. The children were paid by check that was deposited into their own accounts. [redacted] was also paid by check payable to her, but [redacted] did not have a bank account and her check was deposited into [redacted] account. [redacted] did not receive the proceeds of the checks made payable to her.

20. [redacted] was yelled at by the Applicant and was struck by the Applicant many times during her stay in the Applicant's home. The Applicant often used a shoe to strike [redacted] She was struck and yelled at for various reasons including not properly cleaning the house, breaking a dish, or allowing one of the Applicant's children to wear a soiled shirt.

21. On one occasion, the Applicant hit [redacted] with a flexible cane on the side of her abdomen for the alleged reason that [redacted] had allowed one of the Applicant's children to fall and hurt his neck. [redacted] was told that she would be struck twelve times with the cane to punish her for allowing the child to be hurt. After [redacted] moved during the course of being struck, the Applicant informed [redacted] that she would start the count all over because she had moved and proceeded to strike her twelve times.

22. After the Applicant struck [redacted] with a cane, George Udeozor struck [redacted] with the buckle of his belt several times.

23. George Udeozor sexually abused [redacted] repeatedly and threatened her with deportation if she told anyone about his actions.

DISCUSSION

Legal Framework

Section 14-205(b)(3) of the Health Occupations Article provides:

> (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 of this title . . . .

Health Occ. § 14-205(b)(3) (2014 & Supp. 2018). The grounds for action under section 14-404 are:

> (a) 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:
>
> . . . .
>
> (ii) Unprofessional conduct in the practice of medicine . . . .

The burden of proof in this case is initially on the Applicant to establish that she meets all of the licensure requirements of the Medical Practices Act. *Id.* §§ 14-101 *et seq.* (2014 & Supp. 2018). If the State determines that the Applicant has not satisfied all of the requirements, as it has done in this case by claiming that she is guilty of unprofessional conduct in the practice of medicine, then the burden shifts to the State to establish prima facie evidence of that fact. If the State is able to establish prima facie evidence of the fact, then the burden shifts again to the

Applicant to establish the disqualifying fact is not true or not significant enough to deny the Applicant a medical license. In this case, the Applicant argues that she has satisfied all of the requirements for licensure *but for* the allegation of unprofessional conduct in the practice of medicine. The Applicant further argues that the State has failed to establish a prima facie case of unprofessional conduct in the practice of medicine or, alternatively, the allegations are simply untrue.

The Applicant contends that the State's case relies primarily on the hearsay testimony of several witnesses who testified at the criminal trial of the Applicant in the United States District Court for the District of Maryland. As such, the testimony should be given little or no weight as the Applicant did not have an opportunity to cross examine the witnesses. It is fundamental in administrative law that hearsay evidence is not inadmissible and may even be the sole basis of the decision. Maryland's APA provides that "probative evidence that reasonable and prudent individuals commonly accept in the conduct of their affairs" may be admitted in a contested case hearing. Md. Code Ann., State Gov't § 10-213(b) (2014); *see also* COMAR 28.02.01.21B (At an administrative hearing, an administrative law judge "may admit evidence that reasonable and prudent individuals commonly accept in the conduct of their affairs, and give probative effect to that evidence."); COMAR 28.02.01.21C ("Evidence may not be excluded solely on the basis that it is hearsay.").

However, "while administrative agencies are not constrained by technical rules of evidence, they must observe basic rules of fairness . . . so as to comport with the requirements of procedural due process afforded by the Fourteenth Amendment." *Travers v. Balt. Police Dep't*, 115 Md. App. 395, 411 (1997). Moreover, "a decision based on hearsay will be closely scrutinized to determine if the decision is supported by substantial evidence." Arnold Rochvarg, *Principles and Practice of Maryland Administrative Law* § 6.11, at 84 (2011).

In 1971, the United States Supreme Court outlined a number of factors that assured the "reliability and probative value" of specific hearsay evidence—physicians' reports—in a social security disability claim hearing where the claimant did not subpoena the reporting physicians and did not have an opportunity to cross-examine the physicians. *Richardson v. Perales*, 402 U.S. 389, 402 (1971). The Court held that "despite the presence of opposing direct medical testimony and testimony by the claimant himself, [such hearsay evidence] may constitute substantial evidence supportive of a finding by the hearing examiner adverse to the claimant." *Id.*

Maryland's treatment of hearsay

Maryland's appellate courts "have developed guidelines to assure that the [hearsay] evidence which is credited is *reliable* and competent." *Kade v. Charles H. Hickey Sch.*, 80 Md. App. 721, 727 (1989) (emphasis added). *Travers* is the "most useful Maryland case on hearsay and administrative adjudications." Rochvarg, *supra*, § 6.11; at 84. In *Travers*, the court emphasized that the "nature of the hearsay evidence" was an important consideration in its "reliability and probative value." 115 Md. App. at 413. The *Travers* court reviewed Supreme Court cases, including *Perales*, and Maryland appellate cases and concluded that "[s]tatements that are (1) sworn under oath, (2) made close in time to the incident, or (3) corroborated are presumed to be more reliable than other statements." *Prince George's Cty. v. Hartley*, 150 Md. App. 581, 596 (2003) (citing *Travers*, 115 Md. App. at 411).

The *Travers* court also "recognized that a basic tenet of fairness in administrative adjudications is the requirement of an opportunity for reasonable cross-examination" of the complaining witness. The court concluded that concerns about the neutrality of the complaining witness "are less weighty in cases when hearsay statements come into evidence through a disinterested witness." 115 Md. App. at 417-19 (stating further that "[w]e read *Perales* as

standing for the proposition that claimants who forgo their right to subpoena known, material witnesses effectively waive any objections to denial of an opportunity to cross-examine"); *see also Parham v. Dep't of Labor, Licensing & Registration*, 189 Md. App. 604, 618-19 (2009) ("[T]he courts have looked to many factors to determine the reliability of hearsay evidence. One indication of its reliability is whether it has been directly contradicted by other more reliable evidence. Another factor is whether the appellant had a meaningful opportunity to cross-examine the hearsay declarant." (citations omitted)).

Threaded throughout this analysis is the bias or interest of the hearsay declarant. Under "basic rules of fairness," an important factor is whether there is a "meaningful opportunity to cross-examine the hearsay declarant." *Parham*, 189 Md. App. at 618-19. The *Travers* court concluded, however, that "claimants who forgo their right to subpoena known, material witnesses effectively waive any objections to denial of an opportunity to cross-examine." 115 Md. App. at 418-19.

The State argues that the decision of the Fourth Circuit in *United States v. Udeozor*, 515 F.3d 260 (4th Cir. 2008), should result in the application of offensive nonmutual collateral estoppel in the present case as to the findings contained in the decision. The doctrine of collateral estoppel provides that "[w]hen an issue of fact or law is actually litigated and determined by a valid and final judgment, and the determination is essential to the judgment, the determination is conclusive in a subsequent action between the parties, whether on the same or a different claim." *Brown v. Mayor*, 167 Md. App. 306, 319 (2006) (quoting *Murray Int'l Freight Corp. v. Graham*, 315 Md. 543, 547 (1989)). Collateral estoppel applies to bar re-litigation if the answer to each of the following questions is yes:

1. Was the issue decided in the prior adjudication identical with the one presented in the action in question?
2. Was there a final judgment on the merits?

3. Was the party against whom the plea is asserted a party or in privity with a party to the prior adjudication?
4. Was the party against whom the plea is asserted given a fair opportunity to be heard on the issue?

Cosby v Dep't of Human Res., 425 Md. 629, 639 (2012) (quoting *Colandrea v. Wilde Lake Cmty. Ass'n*, 361 Md. 371, 391 (2000)).

Analysis

The issue in this case is whether the Board erred in denying the Applicant's application to reinstate her license to practice medicine. The facts are quite clear that the Applicant has now satisfied all of the general requirements for licensure; however, the Board, in its Notice of Intent to Deny Reinstatement of Licensee Under the Maryland Medical Practice Act, refused to reinstate her license because she was found by the Board to be guilty of unprofessional conduct in the practice of medicine. The foundation for that finding is based upon two convictions on November 18, 2004, following a jury trial in the United States District Court for the District of Maryland: one conviction of conspiracy and another of harboring a juvenile alien [redacted] at the Applicant's residence in Maryland for the purpose of commercial advantage and private financial gain. The Applicant was found not guilty of involuntary servitude. The Applicant, as was her right, did not testify at her criminal trial.

The State argued in its Motion that the Fourth Circuit's determination of the facts underlying the convictions are unassailable pursuant to the doctrine of collateral estoppel, as all four elements required to support collateral estoppel (also referred to as issue preclusion) had been met. The Applicant argued that while the Fourth Circuit described these facts as underlying the decision of the District Court, they cannot be used for collateral estoppel purposes because it is the jury, and not the District Court, that was the finder of fact in that case. Therefore, the only facts that are subject to collateral estoppel are the two convictions following the jury's verdict. These convictions satisfy all four elements necessary for application of collateral estoppel. In

the criminal case, there was a final judgment on the merits. The Applicant was a party to the prior action and was given a fair opportunity to be heard on the issue, although she elected not to testify. The prior adjudication found the Applicant guilty of both conspiracy and harboring of an alien for the purpose of commercial advantage or private financial gain.

The State argued in its Motion that collateral estoppel should be more broadly applied to include the underlying facts cited by the Fourth Circuit. I previously ruled in my Proposed Rulings on Motion and Cross Motion for Summary Decision, issued on October 18, 2018, that the application of collateral estoppel is narrower and is limited to the decision by the jury in the criminal case.

Although I determined that only the findings of the jury can be used for collateral estoppel purposes, the parties had an opportunity to present evidence at a hearing on the merits to determine whether the Board erred in not granting the Applicant a license to practice medicine based on its determination of unprofessional conduct in the practice of medicine. The evidentiary portion of this case included the testimony of only four witnesses. The Applicant testified on her own behalf and also presented the testimony of her [redacted], [redacted] and a homemaker friend, [redacted] Lily Schmulowitz was the only witness who testified on behalf of the State. In addition to their live testimony, several transcripts of testimony from the criminal trial of the Applicant entered into the record. These transcripts include the testimony of [redacted] and [redacted] the Applicants homemaker.

The Applicant argued, unsuccessfully, that the transcripts of the testimony of [redacted] and [redacted] should not have been admitted into evidence because their testimony was hearsay. The Applicant further argued that she did not have an opportunity to cross-examine these witnesses and was, therefore, unable to challenge the veracity of their statements. Accordingly,

she argued that the prior testimony should be given little or no weight in my evaluation of the evidence.

As previously noted, in an administrative proceeding, evidence may not be excluded solely on the basis that it is hearsay. COMAR 28.02.01.21C. The Applicant argues that I would be unable to evaluate the credibility of the witnesses if I am provided only with a transcript of their testimony in a prior proceeding. It is true that I cannot evaluate a witness's credibility based on her demeanor if the witness does not appear to testify in person. However, evaluating demeanor is not the only determining factor in evaluating the probative value of prior, transcribed testimony. First, as previously discussed, the Applicant had the opportunity to cross-examine the witnesses during the lengthy criminal proceeding. Presumably, cross-examination was at least partially focused on the credibility of the witness. Second, if the Applicant believed that the testimony of [redacted] or [redacted] would be significantly different than their testimony at the criminal trial, the Applicant had the opportunity to subpoena each of them to testify in person during this proceeding. She did not. Instead, the Applicant presented the testimony of [redacted], a homemaker and friend of the Applicant, along with the Applicant's [redacted], [redacted].

Ms. [redacted] testified that the Applicant took great care of her infant child who nearly died but for the care of the Applicant. She testified that she saw the Applicant's children in the Applicant's medical office very frequently. Due to her sick children, she saw the Applicant in a professional setting approximately once a month. She saw [redacted] helping with the other children's school work, but never saw her performing any office duties such as cleaning the examination rooms after a patient left or doing general cleaning of the office.

Ms. [redacted] did not testify at the criminal trial of the Applicant and no one asked her to testify. At the time of the trial, her mother was deathly ill and passed away. She

emphasized during her testimony that her mother "bled out." She did not communicate with the Applicant during the Applicant's eighty seven months of incarceration. During her testimony, Ms. [redacted] appeared defensive and would often not directly answer questions asked by the State. For example, when asked whether she was aware of what happened during the criminal trial, she responded, "I lost my Mom, I wasn't there."

I found her to be somewhat hostile in her responses to questions asked by the State. She stated during the hearing that she "lies for no one," even though no one accused her of lying to anyone. She is clearly a close personal friend of the Applicant and her bias towards the Applicant was evident by her defensive posture and her responses to the State's questions. I gave little weight to her testimony as a result.

[redacted] the Applicant's [redacted], testified during the hearing that the Applicant's children and [redacted] would frequently visit the Applicant's medical office. She admitted that they would answer telephones and [the Applicant] would give the children "I don't know, little jobs to do." When asked if the children ever interacted with patients she denied that they did; however, it seems reasonable that if the Applicant's children and [redacted] answered telephones, some of these calls would have been from patients. Ms. [redacted] did not go into any detail what she meant by "little jobs to do in the office." Ms. [redacted] explained that the children and [redacted] were not forced to work, but they did get paid. She explained that since [redacted] did not have a bank account, her payment would be by check payable to both her and [redacted], which was deposited in Ms. [redacted] account. Ms. [redacted] claimed that [redacted] would be paid in cash from her account. The Applicant provided no documentation, including bank records, to corroborate Ms. [redacted] testimony. [redacted] flatly denied, during the criminal trial, ever receiving payment for working in the Applicant's medical office.

Ms. [redacted] testified that [redacted] did participate in family activities and was provided with music lessons and was named as a beneficiary on the Applicant's life insurance policy. She knew that [redacted] helped Ms. [redacted] clean the Applicant's house.

[redacted] testified at length during the criminal trial. She explained that she was brought to the United States by the Applicant's ex-husband, George Udeozor, at the age of fourteen. Her father gave George Udeozor permission to take her to the United States to live a better life than what she had experienced in Nigeria. [redacted] overheard George Udeozor explain to her father that [redacted] would take care of his kids because the Applicant had a fight with the previous baby sitter. George Udeozor further explained to [redacted] father that [redacted] would go to school and that payment would be made to her parents. She explained in detail her responsibilities while living in the Applicant's home, which included caring for the Applicant's younger children, cleaning, cooking, and doing assorted other chores. She testified that while the other children were in school, she would work approximately three days a week in the Applicant's medical office answering phones, along with other office duties including verifying insurance information, rescheduling patients, getting a patient's chart ready, cleaning out the examination rooms, and putting the patient in the room while waiting to see the Applicant. She started working in the Applicant's medical office in October 1997.

[redacted] testified that the Applicant yelled at her and called her names. The Applicant would hit her for not cleaning the house properly or for allowing the other children to leave the house with soiled clothing. When one of the Applicant's children was injured and hurt his neck, the Applicant hit [redacted] with a flexible cane more than twelve times in her midsection. [redacted] provided detail of these beatings and explained that the Applicant's ex-husband repeatedly raped her while he was in the household. She was threatened with deportation if she told anyone. When asked by outsiders why she was not in school, the Applicant told [redacted] to tell them that

she was enrolled in Montgomery College. The Applicant also told [redacted] to say that she was her adopted daughter, although she was never adopted.

[redacted]'s testimony was detailed, and she recounted the beatings and the first instance of rape by George Udeozor with clarity during her testimony, although the incidents occurred years earlier. The severity of the assaults committed would likely be fresh in her mind, despite the years that have gone by, due to the trauma she experienced.

The Applicant testified and painted a completely different picture of what occurred while [redacted] lived in her home and worked in her medical office. The Applicant said she only recalled [redacted] working in her medical office during one summer. She testified during the hearing that she "just made them do things in the office; do whatever they could. Sometimes they would answer the phone." It is noteworthy that the Applicant's office accountant told the Applicant that the Applicant needed a Social Security number for all the children no matter how little they were. Presumably, the Social Security number was needed to account for payments the Applicant made to the children for work performed in the office. [redacted] did not obtain a Social Security number and was not paid for work performed in the medical office. The Applicant testified that she never hit [redacted]

As a challenge to her credibility, the Applicant was asked during cross-examination whether she made misrepresentations to an Immigration Judge concerning her marriage to George Udeozor while still married at the time to [redacted]. She denied that she made any misrepresentations; however, she was found to have done so, as affirmed by the Fourth Circuit in *Obioha v Gonzales*, 431 F.3d 400 (4th Cir. 2005).

The Applicant claimed at the hearing that she never hit [redacted] yet years before, during the criminal trial, [redacted] testified and described in detail the beatings she endured at the hands of the Applicant.

The Applicant, during her sentencing hearing (Bd. Ex. 16), stated that Judge Messitte was "sending an innocent person to prison." She claimed that [redacted] was using the system to punish her. She believed that she was being punished for something she did not do. The Applicant testified during the current hearing, many years after the sentencing hearing, that she did not understand how she was put in this situation. She complained that her attorneys did a "very very bad appeal for me." She stated that a fellow prisoner did a better appeal for her. She did not agree with her appeal.

Her statements during the sentencing hearing and during the instant hearing describe an individual who has no remorse for the actions for which she was convicted. She completely disputes the verdict of the jury, which found her guilty of conspiracy and harboring an illegal alien for financial gain. I find the Applicant's argument that the jury's finding of not guilty on the charge of involuntary servitude somehow diminishes the impact of the jury's other findings simply unpersuasive. Based on the Applicant's testimony at the hearing, it is still quite apparent that the Applicant believes that she was wrongly convicted. She continues to believe that [redacted]s testimony regarding the work she performed and the other matters to which she testified were only for purposes of incriminating her. Having been convicted and sentenced to eighty-seven months in prison along with an order of restitution in the amount of $110,249.60, the Applicant still continues to believe that she was wrongly convicted and shows no remorse.

The Applicant has a history of misrepresenting to immigration officials her marital status and whether she had any children. She appeared defensive when testifying at the hearing and continued to claim that [redacted] was treated as well, if not better, than her own children while she lived in the Applicant's home. She could not deny that the police came to her home when [redacted] called them to take her from the Applicant's home, but claims that she did not know where [redacted] was taken after the police came for her. If [redacted] was considered an equal

member of the Applicant's family, it seems reasonable that the Applicant would follow-up to inquire where [redacted] was taken or where she lived after leaving the Applicant's household. The Applicant's total lack of remorse, her propensity to make statements to immigration officials under oath that are untrue, and her defensive posture at the hearing of this case cause me to discount her testimony. The fact is [redacted] worked in the Applicant's household and in her medical office and was not paid for the work she performed. The jury convicted the Applicant of harboring an alien for financial gain. A restitution order was imposed by Judge Messitte in the amount of $110,249.60 to reimburse [redacted] and to disgorge the Applicant of that financial gain.

The Board denied the Applicant reinstatement of her medical license due to its finding that she was guilty of unprofessional conduct in the practice of medicine. The Court of Appeals has addressed this issue in a number of cases that have relevance to the instant case. First, [redacted] and the Applicant agree that [redacted] worked in the Applicant's medical office. The duration of her time and the scope of work performed by [redacted] in the office are disputed. The Applicant can only remember her working in the office for one summer; however, [redacted] stated during her testimony at the criminal trial that she was working at the office more extensively and while the Applicant's children were in school. All agree that [redacted] answered telephones in the Applicant's medical office. The Applicant stated that she did other unspecified "things" in the office as well.

The issue before me is whether the Applicant was guilty of unprofessional conduct in the practice of medicine. The Court of Appeals ruled in the case of *McDonnell v. Commission on Medical Discipline*, 301 Md. 426 (1984), that the practice of medicine did not include physician misconduct involving a civil malpractice trial in which the physician, Dr. McDonnell, attempted to influence expert witnesses who were scheduled to testify against him in a medical malpractice trial. Similarly, the Applicant argues that the Appellant's convictions for conspiracy and

harboring an illegal alien for financial gain do not fall within the statute that would permit the Board to find that the Applicant was guilty of unprofessional conduct in the practice of medicine. More recently, the Court of Appeals in the case of *Board of Physician Quality Assurance v. Banks*, 354 Md. 59, 71 (1999), held that a physician's sexual harassment of hospital employees occurred in the practice of medicine. The *Banks* court concluded that limiting misconduct committed in the process of diagnosing, evaluating, examining, or treating a patient would lead to unreasonable results and render the statute inadequate to deal with the many situations that may arise. *Id.* at 73. The *Banks* court looked to determine whether the activity was intertwined with patient care to pose a threat to patients or the medical profession.

In the case before me, there can be no dispute that working in a medical office is intertwined with medical care. The Applicant admitted that [redacted] answered phones in the Applicant's medical office. It is reasonable to infer that some of these calls were from patients, insurance companies; medical laboratories, or other individuals directly involved in the Applicant's practice of medicine. The jury found that the Applicant financially gained from [redacted]'s work, which included both work at home and in the Applicant's medical office. As a result, Judge Messitte imposed a restitution order to reimburse [redacted] for the work she performed for which she was not paid. The Applicant's actions by allowing [redacted] to work in her medical office posed a threat to patients or the medical profession because [redacted] was required to respond to telephone inquiries that may have involved confidential patient information, for which there was no indication in the record that she was trained or qualified to handle. During the hearing, the Applicant did not specify other work that [redacted] performed in the office, but [redacted] testified during the criminal trial that she would verify insurance information, reschedule patients, answer the phone, get a patient's chart ready, clean out the room, and put the patient in the room while waiting to see the Applicant. All of these activities

by an undocumented and potentially unqualified assistant posed a clear threat to patients and to the medical profession.

Similarly as in *Banks*, the Court of Special Appeals in *Cornfield v. State Board of Physicians*, 174 Md. App. 456 (2007), determined that unprofessionall conduct in the practice of medicine would also include being dishonest to a hospital peer review committee. The Maryland Courts have thus taken a more expansive view of what constitutes unprofessional conduct in the practice of medicine than the view urged by the Applicant. As the Court of Appeals also noted in *Banks*, courts elsewhere "have not applied an extremely technical and narrow definition of the practice of medicine." 354 Md. at 74. Answering phones in the Applicant's medical office falls within the practice of medicine. Additionally, the work [redacted] performed in the Applicant's medical office falls within and is intertwined with the practice of medicine. Having [redacted] perform these tasks placed the Applicant's patients at risk and supports a finding that the Applicant engaged in unprofessional conduct in the practice of medicine. As a result, the Board did not err in refusing to reinstate the Applicant's medical license.

PROPOSED CONCLUSION OF LAW

Based on the foregoing Findings of Fact and Discussion, I conclude as a matter of law that the Board was correct to deny the Applicant a license to practice medicine in the State as a result of the disciplinary panel's denial on the basis that the Applicant is guilty of unprofessional conduct in the practice of medicine. Md. Code Ann., Health Occ. § 14-404(a)(3)(ii) (Supp. 2018); *Bd. of Physician Qudlity Assurance v. Banks*, 354 Md. 59, 71 (1999).

PROPOSED DISPOSITION

I **PROPOSE** that the February 12, 2018, Maryland State Board of Physicians notification to Adoabi S. Udeozor, M.D., of its intent to deny her application for Reinstatement of her License to Practice Medicine be **UPHELD**.

January 17, 2019
Date Decision Issued

Stuart G. Breslow
Administrative Law Judge

SGB/cj
#177568

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