

IN THE MATTER OF
NORENE S. FLEMING, M.D.

Respondent.

License No. D35998

* BEFORE THE MARYLAND
* STATE BOARD OF
* PHYSICIANS
* Case No. 2011-0265

* * * * *

FINAL DECISION AND ORDER

PROCEDURAL HISTORY

On March 28, 2011, the Maryland State Board of Physicians (Board) charged Norene S. Fleming, M.D., with engaging in unprofessional conduct in the practice of medicine, and failing to cooperate with a lawful investigation conducted by the Board, in violation of the Medical Practice Act, Md. Health Occ. ("H.O") Code Ann. §§ 14-404(a)(3)(ii) and (33) respectively.

1. Investigation

Prior to issuing charges, the Board conducted an investigation based on a complaint received in 2010 from one of Dr. Fleming's former patients regarding Dr. Fleming's OB/GYN care of the patient from January 2007 to January 2008. The patient stated: (1) that she first saw Dr. Fleming when she was about three months pregnant and continued to see her regularly throughout her pregnancy; (2) that Dr. Fleming referred her to Prince George's Hospital for an induction on January 10, 2008; (3) when the patient arrived at the hospital, the doctor on duty informed the patient that the fetus was deceased; (4) that she never heard from Dr. Fleming and had been unable to retrieve her medical records from Dr. Fleming; and (5) Dr. Fleming was no longer at the office where she had practiced in Mitchellville, Maryland, and the patient did not know where Dr. Fleming had relocated.

On June 24, 2010, the Board sent correspondence to Dr. Fleming's address of record including a copy of the complaint and a request for her response to the allegations in the complaint within 21 days. The Board also sent Dr. Fleming a subpoena for the patient's complete medical records. This correspondence was not returned to the Board.

On August 13, 2010, the Board sent correspondence to Dr. Fleming at her address of record by certified mail and regular mail with a copy of the June 24, 2010 letter and subpoena. The Board advised Dr. Fleming that failure to respond to the subpoena may result in disciplinary action against her medical license. The Board requested a response by August 23, 2010. On August 18, 2010, the Board received back the certified mail card with the undated signature of a third party. Information from the United States Postal Service "track-and-confirm" online information stated that the Board's correspondence was delivered on August 16, 2010 at 10:47 a.m. The August correspondence sent by regular mail was not returned to the Board.

2. Administrative Proceedings

The Board sent notice of the charges, including a scheduled date of a case resolution conference ("CRC") on June 1, 2011, to Dr. Fleming's public and non-public addresses of record, by certified and regular mail. On April 19, 2011, the notice was returned to the Board with the word "Refused" handwritten on the top of the envelope. Similarly, the certified mail had been "refused by the addressee" on March 30 and on April 26, 2011, and was returned to the Board on June 2, 2011.

On May 12, 2011, the Board resent the notice to Dr. Fleming in a plain envelope via first class mail to Dr. Fleming's address of record with a cover letter indicating the Board's prior attempt to serve such notice. This Notice was not returned to the Board.

On June 8, 2011, the Board sent a Memorandum to the Office of Administrative Hearings ("OAH") requesting that the matter be assigned to an Administrative Law Judge ("ALJ") for a contested case hearing in accordance with the Administrative Procedure Act, Md. Code Ann., State Gov't § 10-205.

On June 9, 2011, the OAH sent a Notice of In-Person Prehearing Conference and of a contested case hearing to Dr. Fleming (and the Administrative Prosecutor for the State) by first-class mail at her address of record. The prehearing conference was scheduled for July 20, 2011 at 9:30 a.m. The OAH Notice informed Dr. Fleming that her failure to appear or to give timely notice of her inability to appear might result in a decision against her. The Notice also required that each party file with the OAH and on each other at least 15 days before the scheduled date of the prehearing conference a statement containing information necessary for the upcoming contested case hearing scheduled for August 16, 2011. The State timely filed and sent its prehearing statement to Dr. Fleming. Dr. Fleming did not file or exchange any prehearing statement. The notices sent by the OAH to Dr. Fleming were not returned.

On July 20, 2011, the Administrative Prosecutor appeared on behalf of the State at the scheduled pre-hearing conference at the OAH before ALJ Marina L. Sabett. Dr. Fleming failed to appear either in person or through counsel at the pre-hearing conference. After waiting fifteen minutes according to OAH policy, during which time Dr. Fleming still failed to appear, the State made a Motion for Default against Dr. Fleming.

The State requested that the ALJ deem the Board's charges to be admitted as fact by virtue of Dr. Fleming's failure to appear, and that the ALJ adopt the Board's Conclusions of Law. The ALJ granted the State's Motion for Default.

On August 1, 2011, the ALJ issued a Proposed Default Order proposing that (1) Dr. Fleming be found in default; (2) the Board's charges of violating H.O. §§ 14-404(a)(3)(ii) and (33) were uncontested; (3) all further proceedings be terminated; and (4) Dr. Fleming's medical license be revoked. Neither Dr. Fleming nor the Administrative Prosecutor filed exceptions, and the case came before the Board for final disposition. After considering the entire record, the Board issues this Final Decision and Order as the Board's final decision on this case. The Board considers Dr. Fleming's default to apply to the facts alleged in the charging document as well as to the conclusions of law and to Dr. Fleming's liability for sanction.

FINDINGS OF FACT

The Board affirms the ALJ's proposed decision of default as set forth in the ALJ's Proposed Default Order, as well as the ALJ's proposed decision that the Board's charges for violations of H.O. §§ 14-404(a)(3)(ii) and (33) are uncontested, and the termination of all further proceedings in this case. (The ALJ's August 1, 2011 Proposed Default Order is incorporated into this decision and appended as Attachment A). Dr. Fleming was duly notified of the Board's investigation, of the charges, of the CRC, of the prehearing conference, and of the evidentiary hearing scheduled in her case. Dr. Fleming failed to respond to notice of the complaint or to cooperate with the Board's investigation, failed to appear in person or through counsel for the CRC or the prehearing conference scheduled on July 20, 2011.

The Board also adopts as findings of fact all of the Allegations of Fact, numbered 1- 17 in the Board's March 28, 2011 charging document issued in this case. (The Board's charging document dated March 28, 2011 is incorporated into this Final Decision and Order and appended as Attachment B). Due to Dr. Fleming's default, the Board finds that the factual allegations and charges are unrefuted.

In the Board's view, the totality of Dr. Fleming's conduct involved unprofessional conduct in the practice of medicine, and failure to cooperate with the lawful investigation conducted by the Board. In the absence of any evidence to the contrary, the Board adopts these charging allegations as factual findings, and further adopts the ALJ's proposed sanction of revocation.

CONCLUSIONS OF LAW

The Board concludes that Dr. Fleming (1) engaged in unprofessional conduct in the practice of medicine; and (2) failed to cooperate with a lawful investigation conducted by the Board, in violation of H.O §§ 14-404(a)(3)(ii) and (33). Further, the Board concludes that Dr. Fleming was in default with respect to answering the charges, thus she has lost the right to contest them.

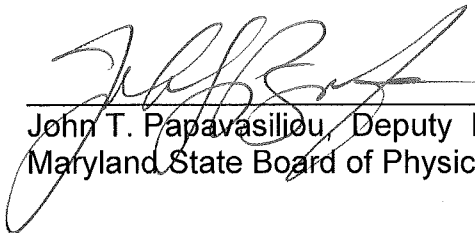
ORDER

It is hereby **ORDERED** that the Board's March 28, 2011 charges filed against Norene S. Fleming, M.D. License No. D35998, be **UPHELD**; and it is further

ORDERED that the medical license of Norene S. Fleming, M.D., License No. D35998, be **REVOKED**; and it is further

ORDERED that this is a Final Decision and Order of the Board, and as such, is a **PUBLIC DOCUMENT** pursuant to Md. State Gov't Code Ann. § 10-611 *et seq.* (Repl. Vol. 2009).

12/14/2011
Date



John T. Papavasiliou, Deputy Director
Maryland State Board of Physicians

NOTICE OF RIGHT TO APPEAL

Pursuant to Md. Code Ann., Health Occ. § 14-408(b), Dr. Fleming has the right to take a direct judicial appeal. Any appeal shall be filed within thirty (30) days from the receipt of this Final Decision and Order and shall be made as provided for judicial review of a final decision in the Maryland Administrative Procedure Act, Md. State Gov't Code Ann. § 10-222 and Title 7, Chapter 200 of the Maryland Rules of Procedure.

If Dr. Fleming files an appeal, the Board is a party and should be served with the court's process at the following address:

**Maryland State Board of Physicians
c/o Yemisi Koya, M.D., Chief, Investigations
4201 Patterson Avenue
Baltimore, Maryland 21215**

In addition, Dr. Fleming should send a copy to the Board's counsel:

**Noreen M. Rubin, Esquire
Office of the Attorney General,
300 W. Preston Street, Suite 302,
Baltimore, Maryland 21201.**

The Administrative Prosecutor is no longer a party to this case and need not be served or copied.

<p>IN THE MATTER OF THE STATE</p> <p>BOARD OF PHYSICIANS</p> <p>v.</p> <p>NORENE S. FLEMING, M.D.</p>	<p>* BEFORE MARINA L. SABETT,</p> <p>* AN ADMINISTRATIVE LAW JUDGE</p> <p>* OF THE MARYLAND OFFICE</p> <p>* OF ADMINISTRATIVE HEARINGS</p> <p>* OAH No.: DHMH-SBP-71-11-22442</p>
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PROPOSED DEFAULT ORDER

On March 28, 2011, the State Board of Physicians (Board) sent to the Respondent, Norene S. Fleming, M.D. (License No. D35998), a “Notice Of Disciplinary Charges and CRC Under the Maryland Medical Practice Act” (Notice) via certified and regular mail to her public and non-public addresses of record (as per the information she provided in her 2010 license renewal application) indicating that the Board was charging her with a violation of section 14-404 of the Maryland Medical Practice Act (the Act). Md. Code Ann., Health Occ. § 14-404 (2009). The Notice further advised that a Case Resolution Conference (CRC) was scheduled for June 1, 2011, to determine whether a reasonable opportunity existed to resolve the issue prior to hearing of whether the Respondent should continue to have the right to practice medicine in Maryland. The CRC was not mandatory and the Respondent did not participate. Indeed, on April 19, 2011, the Notice sent via first class mail was returned to the Board with the word “Refused” handwritten on the front of the envelope. Similarly, the certified mail had been “refused by the addressee” on March 30, 2011 and April 26, 2011, and was ultimately returned to the Board on June 2, 2011.

On May 12, 2011, the Board sent the Notice to the Respondent via first class mail in a plain envelope to the Respondent’s addresses of record with a cover letter indicating the Board’s

prior attempt to serve such Notice. The May 12, 2011 Notice and correspondence were not returned.

On June 8, 2011, the Board sent a Memorandum to the Office of Administrative Hearings (OAH) requesting that the matter be assigned to an Administrative Law Judge (ALJ) for a hearing in accordance with section 10-205 of the State Government Article of the Maryland Annotated Code.. In accordance with OAH procedure, on June 9, 2011, a Notice of In-Person Prehearing Conference was sent to the Respondent at her address of record and to other persons of record scheduling the conference for July 20, 2011, at 9:30 a.m., at OAH.¹ The Notice of In-Person Prehearing Conference sent by first class mail informed the Respondent that her failure to appear or give timely notice of her inability to appear for the in-person prehearing conference might result in a decision against her. The notice also required that each party file with the OAH and on each other at least fifteen days in advance of the July 20, 2011 conference a statement containing various information necessary for purposes of the upcoming contested case hearing scheduled for August 16, 2011. No prehearing statements were filed or exchanged by the Respondent. The Board timely filed and sent its statement to the Respondent by transmittal dated July 5, 2011. No notices sent by the OAH to the Respondent were returned.

On July 20, 2011, an in-person prehearing conference was convened as scheduled, at which time neither the Respondent nor anyone authorized to represent the Respondent appeared. No postponement had been requested by the Respondent. The Administrative Prosecutor, Janet Klein Brown, was present and ready to proceed on behalf of the State.² After waiting the requisite fifteen minutes according to OAH policy, during which time the Respondent still failed

¹ On June 9, 2011, notice of the August 16, 2011 contested case hearing in the above-captioned matter was sent to the Respondent and other persons of record.

² Since the State Board of Physicians is the reviewing entity, the Administrative Prosecutor is said to be representing

to appear, the State made a Motion for Default against the Respondent. The State further asked that I deem the Board's Charges to be admitted fact by virtue of the Respondent's failure to appear, and that I adopt the Board's Conclusions of Law. I granted the State's Motion, but I cannot make the requested specific Findings of Fact, as doing so would require a hearing or the filing of other appropriate documentation upon which I could render a summary decision.

IT IS THEREFORE PROPOSED that the Respondent, Norene S. Fleming, M.D., be found in default in OAH case number DHMH-SBP-71-11-22442;

IT IS PROPOSED that the charges that the Board issued against Respondent for violating section 14-404(a)(3) of the Maryland Annotated Code, Health Occupations Article (unprofessional conduct in the practice of medicine) and section 14-404(a)(33) of the Maryland Annotated Code, Health Occupations Article (fails to cooperate with a lawful investigation conducted by the Board) are uncontested; and

IT IS PROPOSED that pursuant to § 14-407 of the Health-Occupations Article, Annotated Code of Maryland (2009) the Respondent's license to practice medicine be **REVOKED**;

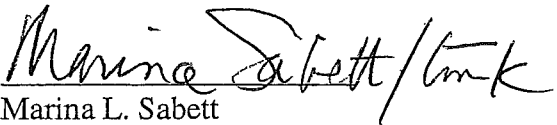
IT IS PROPOSED that all further proceedings in this matter are **TERMINATED**; and

IT IS PROPOSED that in accordance with Code of Maryland Regulations 28.02.01.23 and 10.32.02.03F: (1) the parties may file written exceptions to this Proposed Default Order and request a hearing with the Board (4201 Patterson Avenue, Baltimore, Maryland 21215-2299, ATTN: Geneva Goode, Administrative Aide to Supervisor, Compliance Administration) within fifteen (15) working days of the date of this Proposed Default Order; (2) any such written

"the State" in these proceedings.

exceptions and/or request for hearing must be copied to the opposing party; and (3) the opposing party will have fifteen (15) days from the date of any written exceptions to file exceptions in response.

August 1, 2011
Date Mailed


Marina L. Sabett
Administrative Law Judge

MLS/sh
#124927

Copies mailed to:

Norene S. Fleming, MD
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Forestville, MD 20747

Janet Klein Brown, Esquire
Office of the Attorney General
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Baltimore, MD 21201

C. Irving Pinder, Jr.
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IN THE MATTER OF	*	BEFORE THE MARYLAND
NORENE S. FLEMING, M.D.	*	STATE BOARD
RESPONDENT	*	OF PHYSICIANS
LICENSE NO: D35998	*	CASE NO: 2011-0265

* * * * *

CHARGES UNDER THE MARYLAND MEDICAL PRACTICE ACT

The Maryland Board of Physicians (the "Board") hereby charges Norene S. Fleming, M.D. (the "Respondent") (D.O.B. 12/16/49) license number D35998 with violating the Maryland Medical Practice Act (the "Act") codified at Md. Health Occ. Code Ann. ("H.O.") §§ 14-101 *et seq.* (2009 Repl. Vol).

The pertinent provisions of the Act under § 14-404 provide the following:

(a) *In general.* --Subject to the hearing provisions of § 14-405 of this subtitle, the Board, on the affirmative vote of a majority of the quorum, 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;
- (33) Fails to cooperate with a lawful investigation conducted by the Board[;].

ALLEGATIONS OF FACT¹

The Board bases its charges on the following facts that the Board has reason to believe are true:

¹ The statements of Respondent's conduct with respect to the matters identified herein are intended to provide Respondent with notice of the alleged charges. They are not intended as, and do not necessarily represent, a complete description of the evidence, either testimonial or documentary, to be offered against Respondent in connection with these charges.

I. Background

1. At all times relevant hereto, Respondent was licensed to practice medicine in Maryland. Respondent was originally licensed to practice medicine in Maryland on November 4, 1987, under license number D35998. Respondent's license will expire on September 30, 2012.

2. Respondent maintains an office for the solo practice of Obstetrics and Gynecology (OB/GYN) in Forestville, Maryland, where she is involved in patient care approximately 20 hours per week. Respondent does not employ any staff.

3. On September 29, 2010, Respondent submitted an application for renewal of her Maryland license to practice medicine. In her application, Respondent stated that her practice is limited to gynecology.

4. Respondent is not board certified.

5. Respondent does not hold any hospital privileges. Respondent previously held hospital privileges at Prince George's Hospital Center, Cheverly, Maryland and Doctors Community Hospital, Lanham, Maryland.

6. Respondent holds inactive licenses to practice medicine in Missouri, New York, North Carolina, and the District of Columbia.

II. Complaint

7. On June 1, 2010, the Board received a written complaint from a former patient of Respondent's, Patient A², regarding Respondent's OB/GYN care of her from July 2007 to January 2008. Patient A stated that she first saw Respondent when she was about three months pregnant and continued to see her regularly throughout her

² Patient names are confidential and are not used in the charging document. Respondent is aware of the identity of Patient A

pregnancy. Patient A further stated that on January 9, 2008, Respondent referred her to Prince George's Hospital for induction on January 10, 2008. On January 10, 2008, when Patient A arrived at Prince George's Hospital, the doctor on duty informed Patient A that the fetus was deceased.

8. Patient A stated that thereafter she never heard from Respondent and she has been unable to retrieve her medical records from Respondent. Respondent had left the office where she had previously practiced in Mitchellville, Maryland. Patient A stated she did not know where Respondent had re-located.

III. Case Specific Allegations

9. On June 24, 2010, the Board sent correspondence to Respondent to her address of record by regular mail informing her that a complaint had been filed by Patient A. The Board provided Respondent with a copy of the complaint and requested Respondent to file a response to the allegations within 21 days.

10. On June 24, 2010, the Board also sent Respondent a Board subpoena for the "complete medical records to include sonogram/ultrasound films/printout for (Patient A) whether generated by you, or any other health care provider or entity." The subpoena was also returnable within 21 days.

11. The June 24, 2010 correspondence has not been returned to the Board.

12. On August 13, 2010, the Board sent correspondence to Respondent by certified mail and regular mail, to her address of record, with a copy of the June 24, 2010 letter and subpoena.

13. In this August correspondence, the Board advised Respondent that failure to respond to the subpoena may result in disciplinary action against her license and required her response by August 23, 2010.

14. On August 18, 2010, the Board received the certified mail card with an undated signature of a third party.

15. The Board obtained "track and confirm" on-line information from the United States Postal Service which stated that the certified mail correspondence was delivered on August 16, 2010 at 10:47 a.m.

16. The August correspondence that was sent by regular mail has not been returned to the Board.

17. To date, Respondent has not responded to the Board's subpoena.

III. Summary of Allegations

18. Respondent's conduct, including but not limited to failing to respond to a Board subpoena for medical records and failing to respond to the allegations in a complaint, is evidence of unprofessional conduct in the practice of medicine in violation of H.O. § 14-404(a)(3)(ii) and failure to cooperate with a lawful investigation conducted by the Board in violation of H.O. § 14-404(a) (33).

NOTICE OF POSSIBLE SANCTIONS

If, after a hearing, the Board finds that there are grounds for action under H.O. § 14-404(a)(3)(ii) or H.O. § 14-404(a)(33) the Board may impose disciplinary sanctions against Respondent's license, including revocation, suspension, or reprimand, and may place Respondent on probation and under H.O. § 14-405.1, the Board may impose a monetary penalty.

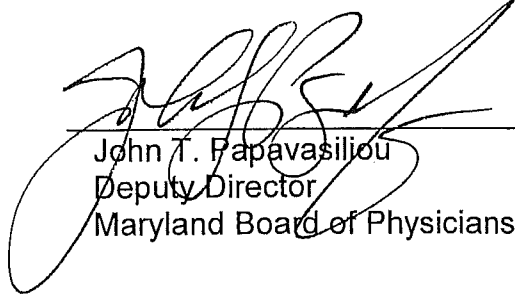
**NOTICE OF HEARING, CASE RESOLUTION CONFERENCE AND PREHEARING
CONFERENCE**

A Case Resolution Conference in this matter is scheduled for **Wednesday, June 1, 2011 at 10:00 a.m.** at the Board's office, 4201 Patterson Avenue, Baltimore, Maryland 21215. The nature and purpose of the Case Resolution Conference is described in the attached letter to Respondent.

If the case cannot be resolved at the Case Resolution Conference, a pre-hearing conference and a hearing in this matter will be scheduled at the Office of Administrative Hearings, Administrative Law Building, 11101 Gilroy Road, Hunt Valley, Maryland 21031. The hearing will be conducted in accordance with § 14-405 of the Act and Md. State Gov't Code Ann. § 10-201 *et seq.* (2009 Repl. Vol.).

3/28/11

Date



John T. Papavasiliou
Deputy Director
Maryland Board of Physicians