

IN THE MATTER OF	*	BEFORE THE
IVENS C. LEFLORE, M.D.	*	MARYLAND STATE BOARD
Respondent	*	OF PHYSICIANS
License No: D09546	*	Case No: 2217-0037B
* * * *	*	* * * *

FINAL DECISION AND ORDER

On August 31, 2017, Disciplinary Panel B ("Panel B") of the Maryland State Board of Physicians (the "Board") charged Ivens C. LeFlore, M.D. under the Maryland Medical Practice Act, Md. Code Ann., Health Occ. §§ 14-101—14-702, with unprofessional conduct in the practice of medicine, *see* Health Occ. § 14-404(a)(3)(ii). In addition, Panel B charged Dr. LeFlore with violating the regulations pertaining to the Board's Continuing Medical Education ("CME") requirements. *See* COMAR 10.32.01.10. The case was forwarded to the Office of Administrative Hearings ("OAH") for an evidentiary hearing. On April 3, 2018, an administrative law judge ("ALJ") of OAH held the evidentiary hearing.

On May 17, 2018, the ALJ issued a proposed decision. The ALJ concluded that Dr. LeFlore was guilty of unprofessional conduct in the practice of medicine, in violation of Health Occ. § 14-404(a)(3)(ii), Health Occ. § 14-316, and COMAR 10.32.01.08H—10C(1), and that Dr. LeFlore failed to timely provide certificates or other documentation of attendance for the completion of at least 50 credit hours of CME for the two years preceding the expiration of his license in violation of COMAR 10.32.01.08—10C and E. The ALJ recommended that Dr. LeFlore be reprimanded and ordered to pay a civil fine of \$1,000.¹

¹ Under § 14-405.1 of the Health Occupations Article, a disciplinary panel may impose a fine in addition to a reprimand authorized under § 14-404.

The State filed exceptions to the ALJ's proposed decision concerning the amount of the fine. The State proposes a fine of \$5,000. Dr. LeFlore did not file any exceptions to the ALJ's proposed decision, but he did file a response to the State's exceptions. On August 8, 2018, Board Disciplinary Panel A (the "Panel" or "Panel A") held a hearing on the exceptions.

FINDINGS OF FACT

The following facts were proven by the preponderance of the evidence:

At all times relevant, Dr. LeFlore was licensed to practice medicine in the State of Maryland. He was initially licensed in March of 1971. His two-year license, renewed in 2014, expired on September 30, 2016. His license has remained current and active through September 30, 2018.² He is a Board-certified plastic surgeon in private practice in Woodbine, Maryland.

On September 18, 2016, Dr. LeFlore submitted to the Board his application to renew his license to practice medicine in Maryland. In the application, Dr. LeFlore attested that, within the two-year period immediately preceding the submission of his application, he had earned at least 50 credit hours of Category I CME.³

Upon submitting the application, the Board notified Dr. LeFlore that he was randomly selected for an audit of his CME credits. He was asked by the Board to submit his CME documentation within 15 days. The CME documentation requirements are set forth under COMAR 10.32.01.10E(2)(a), which require a certificate or other documentation of attendance containing, at a minimum, (i) program title; (ii) sponsor's name; (iii) physician's name; (iv) inclusive date or dates and location of the CME event; (v) CME category designation and the

² This reflects the information available as of the date of the evidentiary hearing at OAH.

³ A physician applying for license renewal, in Maryland, shall have earned 50 credit hours of Category I CME in the two-year period preceding the date of the expiration of the physician's license. COMAR 10.32.01.10C(1); COMAR 10.32.01.10A(2)(a)(i).

number of designated or prescribed CME credit hours; and (vi) documented verification of successful completion by stamp, signature, hospital printout, or other official proof.

On September 23, 2016, Dr. LeFlore submitted to the Board printouts of the schedules of two medical conventions. One of the schedules was for the plastic and reconstructive surgery section at the 2015 National Medical Association ("NMA") Annual Convention and Scientific Assembly and the other schedule was for the plastic and reconstructive surgery section at the 2016 NMA Annual Convention and Scientific Assembly.⁴ The only city mentioned on the schedules is Chicago, Illinois, which is listed on both, and Mark A. Grevious, M.D. M.B.A., is listed on each as the Chair. Along with these schedules, Dr. LeFlore submitted a note in which he handwrote the following:

Ivens LeFlore, M.D.

(1) NMA Plastic Surgery
Chicago, Ill.
8/1/2015 - 8/5/2015

32 HRS

LAC

(2) NMA Plastic
Surgery Los Angeles
7/30/2016 -
8/3/2016

32 HRS

(3) OP[I]OID 9/
1 CME
9/15/16

9/18/15

⁴ The NMA is certified by the Accreditation Council for Continuing Medical Education, whose members include, among others, the American Medical Association, to provide CME to physicians.

Ivens LeFlore [in signature]

On the 2015 schedule, for August 2, at 8:30 - 9:00 AM, Dr. LeFlore is listed as presenting "The Pearls and Pitfalls of Private Practice." This is the only mention of Dr. LeFlore on either schedule. On the 2016 schedule, for July 31, at 9:00 AM - 9:30 AM, "The Pearls and Pitfalls of Private Practice" is listed, but no one is listed as the presenter. The schedules do not mention, or contain any information about, CME credits.

On February 22, 2017, Rhonda Anderson, the Supervisor of Customer Service at the Board, sent a letter to Dr. LeFlore notifying him that the documentation he submitted to verify his CME credits was incomplete. Ms. Anderson directed Dr. LeFlore to submit the appropriate documentation verifying the completion of his CME credits to the Board by March 20, 2017. In particular, Ms. Anderson wrote that Dr. LeFlore needed to submit certificates of attendance. The letter advised Dr. LeFlore to submit the appropriate documentation verifying completion of his CME credits to the Board by March 20, 2017.

On February 27, 2017, Ms. Anderson and Dr. LeFlore spoke over the telephone and, Ms. Anderson reiterated the need for certificates of attendance.

On March 17, 2017, the Board received from Dr. LeFlore an unsigned letter from Mark A. Grevious, MBA, FACS, the Chairman of Plastic Surgery, addressed to Dr. LeFlore. Dr. Grevious wrote that Dr. LeFlore attended, participated, and lectured at the 2015 and 2016 NMA conferences. Dr. Grevious wrote his letter on his private practice's letterhead. The letter does not include the dates or locations of the conferences, CME category designations, the number of CME credit hours Dr. LeFlore received, or a signature.

On March 20, 2017, Ms. Anderson and Dr. LeFlore again spoke over the telephone. Ms. Anderson informed Dr. LeFlore that Dr. Grevious's letter was not compliant with the regulations

pertaining to the appropriate documentation of CME credit hours. Dr. LeFlore became angry with Ms. Anderson for not accepting the documentation and refused to acknowledge the Board's requirements. Ms. Anderson told Dr. LeFlore to consult the Board's CME regulations and to contact the AMA to try to obtain credit for his activities. Dr. LeFlore did not request an extension to submit CME documentation that complied with the regulations. Ms. Anderson would have provided Dr. LeFlore with a 30 to 45-day extension had he requested one.

On March 21, 2017, Ms. Anderson informed the Board's compliance unit that Dr. LeFlore failed to submit appropriate evidence of his 50 CME credits.

On March 27, 2017, the Board's compliance unit informed Dr. LeFlore that he failed to submit the appropriate CME documentation. To settle the matter, the Board requested that he sign a consent order acknowledging his failure to obtain the requisite CME credits. On April 5, 2017, Dr. LeFlore declined signing the consent order and requested a hearing.

On June 9, 2017, Dr. LeFlore contacted NMA and requested official CME certificates evincing his participation in the 2015 and 2016 NMA annual conventions. NMA informed him that he would have to pay the convention registration fees in order to obtain the certificates. Dr. LeFlore was a lecturer at the 2015 and 2016 NMA conventions. As such, he was considered a "guest," and thus able to attend the conventions free of charge, but NMA only awards CME credit to attendees who register as a "participant" and pay the convention registration fee. Dr. LeFlore thus had previously not obtained the CME credits because he had not paid the registration fees for the conventions and had not registered as a participant. Thus, in June 2017, Dr. LeFlores had to pay the registration fees to earn the CME credits.

On June 9, 2017, to earn the CME credits, Dr. LeFlore paid NMA the convention participant registration fees. Dr. LeFlore paid \$1,020 to register as a participant for the 2015

convention and \$1,020 to register as a participant for the 2016 convention. On August 21, 2017, NMA issued Dr. LeFlore Certificates of Credit which awarded Dr. LeFlore 30 AMA PRA Category 1 credits for its 2015 Annual Convention and Scientific Assembly in Detroit, Michigan on August 1 - 5, 2015, and 30 AMA PRA Category 1 credits for its Annual Convention and Scientific Assembly in Los Angeles, California, on July 30 - August 3, 2016. On August 24, 2017, counsel for Dr. LeFlore forwarded to the Board the Certificates of Credit for the 2015 and 2016 NMA conventions.

On August 31, 2017, Panel B of the Board issued charges against Dr. LeFlore alleging that he violated the Maryland Medical Practice Act.

CONCLUSIONS OF LAW

Panel A concludes as a matter of law that Dr. LeFlore failed to timely provide certificates or other documentation of attendance, required under COMAR 10.32.01.10E(2)(a), for the completion of at least 50 credit hours of Category I continuing medical education for the two years preceding September 30, 2016, the expiration of his license renewed in 2014. COMAR 10.32.01.08; COMAR 10.32.01.10C and E.

Panel A also concludes as a matter of law that Dr. LeFlore is guilty of unprofessional conduct in the practice of medicine. Health Occ. § 14-404(a)(3)(ii); *Kim v. Maryland State Bd. of Physicians*, 423 Md. 523, 542 (2011); COMAR 10.32.01.10C(1); COMAR 10.32.01.08H; Health Occ. § 14-316.

SANCTION

ALJ's Proposed Sanction

The ALJ recommended that the Panel reprimand Dr. LeFlore and impose a \$1000 civil fine. Concerning the proposed reprimand, the ALJ explained, "[Dr. LeFlore] was given multiple

opportunities to submit conforming CME documentation and failed to do so within a timely manner. Instead of working with the Board, [Dr. LeFlore] became defiant and refused to acknowledge the Board's requirements." Neither party challenged the proposed reprimand.

Concerning the proposed \$1,000 fine, the ALJ first addressed a Consent Order entered into evidence by the State. The Consent Order resolved a Board disciplinary action against another physician. *See In the Matter of Mohammad A. Shaikh, M.D.*, Board Case Number 20117-0230B (issued March 29, 2017). In the Consent Order, Dr. Shaikh agreed to a reprimand and a \$500 fine for failing to timely submit documentation of his CME credits. The ALJ in Dr. LeFlore's case noted that the \$500 fine in Dr. Shaikh's case "is well below the \$5,000.00 the [State] seeks in this case." The ALJ also found favorable to Dr. LeFlore that he made several attempts to provide the Board with CME documentation. The ALJ appreciated that Dr. LeFlore did make these attempts, even though his earlier submissions did not comply with the regulations. The ALJ also credited Dr. LeFlore for eventually submitting the correct documentation, although the ALJ did point out that Dr. LeFlore had "impeded the Board's ability to complete its audit" and "wasted the Board's resources."

In imposing the fine, the ALJ cited COMAR 10.32.02.10B(3)(c) of the Board's sanctioning guidelines, which concerns unprofessional conduct in the practice of medicine in cases of ethical violations that are not sexual in nature. The range of fines in COMAR 10.32.02.10B(3)(c) is between a minimum of \$5,000 and a maximum of \$50,000. Referencing COMAR 10.32.02.10A ("the disciplinary panel may impose sanctions as outlined in [COMAR 10.32.02.10B]"), the ALJ found that the sanctioning guidelines are permissive, rather than mandatory, and arrived at \$1,000.

The State Recommends a \$5,000 Fine

The State took exception to the amount of the fine proposed by the ALJ. The State relies upon COMAR 10.32.02.10B(3)(c), seeking the sanctioning guidelines' minimum fine of \$5,000. The State maintains that a fine below the minimum is not appropriate for Dr. LeFlore.

With respect to the \$500 imposed upon Dr. Shaikh, the State contends that Dr. LeFlore's case is distinguishable, because Dr. Shaikh's case was resolved through a consent order, while Dr. LeFlore opted for an evidentiary hearing. The State also urges the Panel not to credit Dr. LeFlore for his attempts to satisfy the CME requirements with non-conforming documentation. According to the State, instead of submitting non-conforming documents, Dr. LeFlore should have simply followed the regulations and instructions of Board staff. Lastly, the State argues that Dr. LeFlore took 11 months to provide the Board with the correct documentation. This was because Dr. LeFlore did not obtain the required documentation until he paid for the conference registrations, which was after he was audited and after he repeatedly challenged the Board staff over the required documentation.

Dr. LeFlore's Response

Dr. LeFlore's response to the State's exceptions emphasizes his lengthy medical career and his lack of any prior disciplinary history. Dr. LeFlore also addresses Dr. Shaikh's Consent Order. According to Dr. LeFlore, the fact pattern involving Dr. Shaikh is identical to the one in Dr. LeFlore's case, and Dr. LeFlore takes issue with the premise that Dr. LeFlore should receive a higher fine than Dr. Shaikh for not entering into a consent order. He argues, in essence, that he should not be penalized for pursuing an evidentiary hearing in this matter.

The Panel's Decision on the Sanction

The Panel finds Dr. Shaikh's Consent Order of minor significance. The Consent Order does not indicate that, after the Board asked for documentation of his CME, Dr. Shaikh needed to earn the credits.

In contrast, it was 11 months after Dr. LeFlore attested that he had earned at least 50 CME credits that he actually earned the requisite CME credits. Dr. LeFlore attested on his 2016 license renewal application that he had earned at least 50 hours of Category I continuing medical education during the preceding two-year period. Dr. LeFlore's CME response on the 2016 license renewal application was untrue. Dr. LeFlore had attended the conferences as a *guest*, not as a full *participant*, therefore, he had not paid the convention registration fees. Guest attendance is not meant for CME credits. Dr. LeFlore was not entitled to the CME credits until after he registered as a conference participant and paid his registration fees.

Physicians are required to obtain the official documentation of credit hours for the purpose of a "possible inspection by the Board." COMAR 10.32.01.10E(1)—(2). Dr. LeFlore had not obtained official documentation of the credit hours for inspection by the Board because he had not earned the credit hours when he applied for the renewal of his license. He was required to procure the CME credits and the documentation of his CME credits before he submitted his renewal application, not after he received notice of the audit, and certainly not after notification that the Board might issue charges

Dr. LeFlore testified that when he was notified that he was randomly selected for a CME audit, "it did not raise any fears because I know I already have my documentation." Dr. LeFlore

further stated that the conference schedules demonstrate "that I have to be there. And by being on the program there's no question -- and you have a name tag that you were physically there." Dr. LeFlore, in fact, initially responded to the audit notice by submitting to the Board the schedules of the two medical conferences and handwriting "32 HRS" for each of the conferences.

It is unclear to the Panel how Dr. LeFlore could have believed that the two conference *schedules* would suffice for documentation of 50 credit hours of CME. For the purpose of fulfilling CME requirements, *certificates* of attendance or credit are a mainstay and a central component of medical conferences. In any case, when notified by the Board that the conference schedules were unacceptable and that he needed to provide certificates, Dr. LeFlore became dismissive. Instead of pursuing the certificates, he next gave the Board an unsigned letter from Mark A. Grevious, M.D., which did not contain dates of attendance, location of conferences, or number or designation of credits. *See* COMAR 10.32.01.10E(2)(a). It also is not clear in what capacity Dr. Grevious was acting when wrote the letter. The letter does not indicate he was acting in his capacity as a NMA official. The letter appears to be on Dr. Grevious's private practice letterhead. The Board notified Dr. LeFlore that Dr. Grevious's letter was also unacceptable and that he (Dr. LeFlore) might be administratively charged under the Maryland Medical Practice Act with unprofessional conduct.

After the Board notified him that he might be charged with unprofessional conduct, Dr. LeFlore, in order to obtain the requisite credits, spoke with the National Medical Association ("NMA"), which had organized the conferences. NMA told him that he had to pay the fees for the conference participant registrations to obtain the credits. Dr. LeFlore paid the participant registration fees on June 9, 2017, and, on August 21, 2017, NMA issued the certificates of credit. Thus, Dr. LeFlore earned the requisite credits only after it became clear to him that the Board

was going to issue disciplinary charges against him. His response, 11 months earlier, on his September 2016 license renewal application concerning CME credits was thus false. The Panel cannot condone a false application response.

The Panel agrees with the State that the ALJ's proposed fine of \$1,000 is not an appropriate amount for these circumstances. Dr. LeFlore's unprofessional conduct in the practice of medicine warrants a reprimand and a civil fine of \$5,000. The State's exception is accepted.

ORDER

It is, thus, on the affirmative vote of a majority of the quorum of Board Disciplinary Panel A, hereby

ORDERED that Ivens C. LeFlore, M.D. is **REPRIMANDED**; and it is further

ORDERED that, within six months, Dr. LeFlore shall pay a **civil fine of \$5,000.00**. The payment shall be by money order or bank certified check made payable to the Maryland Board of Physicians and mailed to P.O. Box 37217, Baltimore, Maryland 21297. The Board will not renew or reinstate Dr. LeFlore's license if Dr. LeFlore fails to timely pay the fine to the Board; and it is further

ORDERED that the effective date of this Final Decision and Order is the date this Final Decision and Order is signed by the Executive Director of the Board or her designee. The Executive Director or her designee signs the Final Decision and Order on behalf of Panel A, which has imposed the terms and conditions of this Final Decision and Order; and it is further

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

10/01/2018

Date

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

NOTICE OF RIGHT TO APPEAL

Pursuant to § 14-408(a) of the Health Occupations Article, Dr. LeFlore has the right to seek 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 Respondent. 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. LeFlore petitions for judicial review, the Board is a party and should be served with the court's process. In addition, Dr. LeFlore should send a copy of his 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.