

IN THE MATTER OF

KWOK C. LEE, M.D.

Respondent

License Number: D24031

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BEFORE THE MARYLAND

STATE BOARD OF

PHYSICIANS

Case Number: 2217-0068

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## FINAL DECISION AND ORDER

### BACKGROUND

On November 7, 2017, Disciplinary Panel A of the Maryland State Board of Physicians (“Board”) charged Kwok C. Lee, M.D. with unprofessional conduct in the practice of medicine, willfully making a false representation when seeking or making application for licensure or any other application related to the practice of medicine, and failure to obtain the continuing medical education (“CME”) credits required for license renewal. *See* Md. Code Ann., Health Occ. (“Health Occ.”) § 14-316(d), Health Occ. § 14-404(a) (3)(ii), (36), COMAR 10.32.01.08, COMAR 10.32.01.09. The charges concerned Dr. Lee’s failure to complete the CME credits required for license renewal and his misrepresentation on his renewal application that he had completed the requirement.

The case was forwarded to the Office of Administrative Hearings (“OAH”) for an evidentiary hearing and a proposed decision. On July 2, 2018, a hearing was held before an Administrative Law Judge (“ALJ”) at OAH. At the hearing, the State presented testimony from two Board staff members. Dr. Lee represented himself and participated in the hearing by telephone from China.

On September 24, 2018, the ALJ issued a proposed decision concluding that Dr. Lee failed to comply with the Board’s CME requirements, willfully made a false representation on

his renewal application, in violation of Health Occ. § 14-404(a)(36), and was guilty of unprofessional conduct in the practice of medicine for failing to complete the CME requirements and providing false information on his renewal application, in violation of Health Occ. § 14-404(a)(3)(ii). Accordingly, the ALJ proposed that the Board's charges be upheld and recommended that the Board reprimand Dr. Lee and order him to pay a fine of \$10,000.00.

Neither party filed exceptions to the ALJ's proposed decision. On November 28, 2018, this matter came before Disciplinary Panel B ("Panel B") of the Board. Panel B has considered the record in this case, including the proposed decision of the ALJ, and now issues this order based on Panel B's findings of fact and conclusions of law. *See* COMAR 10.32.02.05B(4).

#### **FINDINGS OF FACT**

Panel B adopts the ALJ's proposed findings of fact 1 - 16. *See* ALJ proposed decision, attached as **Exhibit 1**. These facts are incorporated by reference into the body of this document as if set forth in full. Neither party filed exceptions to any of the factual findings and the factual findings were proved by a preponderance of the evidence. The Panel also adopts the ALJ's discussion set forth on pages 7-18. The discussion section is incorporated by reference into the body of this document as if set forth in full.

#### **CONCLUSIONS OF LAW**

Panel B concludes that Dr. Lee is guilty of unprofessional conduct in the practice of medicine, in violation of Health Occ. § 14-404(a)(3)(ii), and willfully making a false representation when seeking or making application for licensure or any other application related to the practice of medicine, in violation of Health Occ. § 14-404(a)(36), based on his failure to obtain the required CME credits for license renewal, in violation of Health Occ. § 14-316(d), COMAR 10.32.01.08, and COMAR 10.32.01.09.<sup>1</sup>

## SANCTION

Panel B adopts the sanction recommended by the ALJ, which is to reprimand Dr. Lee and impose a \$10,000.00 fine.

## ORDER

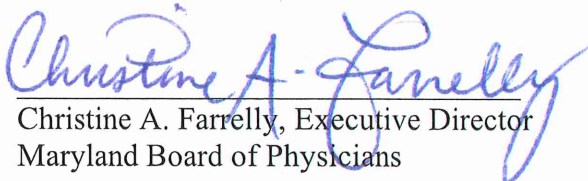
Based upon the findings of fact and conclusions of law, it is, on the affirmative vote of a majority of the quorum of Board Disciplinary Panel B, hereby

**ORDERED** that Kwok C. Lee, M.D., is **REPRIMANDED**; and it is further

**ORDERED** that Dr. Lee shall pay a civil fine of \$10,000.00. 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. Dr. Lee's license will not be reinstated until the fine has been paid in full.<sup>2</sup> See COMAR 10.32.02.09F.

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

12/03/2018  
Date

  
Christine A. Farrelly, Executive Director  
Maryland Board of Physicians

## NOTICE OF RIGHT TO PETITION FOR JUDICIAL REVIEW

Pursuant to Md. Code Ann., Health Occ. § 14-408, Dr. Lee has the right to seek judicial review of this Final Decision and Order. Any petition for judicial review shall be filed within

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<sup>1</sup> The requirements related to continuing medical education are now found in COMAR 10.32.01.08 and COMAR 10.32.01.10.

<sup>2</sup> Dr. Lee's license expired on September 30, 2018.

thirty (30) days from the date of mailing of this Final Decision and Order. The cover letter accompanying this Order indicates the date the decision is mailed. Any petition for judicial review shall be made as provided for in the Administrative Procedure Act, Md. Code Ann., State Gov't § 10-222 and Title 7, Chapter 200 of the Maryland Rules of Procedure.

If Dr. Lee files a petition for judicial review, the Board is a party and should be served with the court's process at the following address:

**Maryland State Board of Physicians  
Christine A. Farrelly, Executive Director  
4201 Patterson Avenue  
Baltimore, Maryland 21215**

Notice of any petition should also be sent to the Board's counsel at the following address:

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

MARYLAND STATE BOARD OF  
PHYSICIANS

v.

KWOK LEE, M.D.,  
RESPONDENT

LICENSE No.: D24031

\* BEFORE DEBORAH S. RICHARDSON,  
\* AN ADMINISTRATIVE LAW JUDGE  
\* OF THE MARYLAND OFFICE  
\* OF ADMINISTRATIVE HEARINGS  
\*  
\* OAH No.: MDH-MBP2-71-18-06681

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**PROPOSED DECISION**

STATEMENT OF THE CASE  
ISSUES  
SUMMARY OF THE EVIDENCE  
PROPOSED FINDINGS OF FACT  
DISCUSSION  
PROPOSED CONCLUSIONS OF LAW  
PROPOSED DISPOSITION

**STATEMENT OF THE CASE**

On November 7, 2017, the Maryland State Board of Physicians (Board) issued charges under the Maryland Medical Practice Act (Medical Practice Act) against Kwok Lee, M.D. (Respondent), License No. D24031, alleging violations of the State law governing the practice of medicine. Md. Code Ann., Health Occ. §§ 14-101 through 14-508, and 14-601 through 14-607 (2014 & Supp. 2017); Code of Maryland Regulations (COMAR) 10.32.11. Specifically, the Respondent is charged with violating sections 14-404(a)(3) (unprofessional conduct in the practice of medicine); 14-404(a)(36) (willfully making a false representation); and 14-316(d) (continuing medical education requirements) and COMAR 10.32.01.08 and .10 (continuing medical education requirements). COMAR 10.32.02.03E(3)(d).<sup>1</sup> The disciplinary panel to which

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<sup>1</sup> In its Charges, the Board cited COMAR 10.32.01.08 and .09. The regulation previously found at COMAR 10.32.01.09, relating to Continuing Medical Education requirements, has since been moved to 10.32.01.10.

the complaint was assigned forwarded the charges to the Office of the Attorney General for prosecution, and another disciplinary panel delegated the matter to the Office of Administrative Hearings (OAH) for issuance of proposed findings of fact, proposed conclusions of law, and a proposed disposition. COMAR 10.32.02.03E(5); COMAR 10.32.02.04B(1)(c).

I held a hearing on July 2, 2018, at the OAH in Hunt Valley, Maryland. Health Occ. § 14-405(a) (Supp. 2017); COMAR 10.32.02.04. Michael Brown, Assistant Attorney General and Administrative Prosecutor, represented the State of Maryland (State) and was present in Hunt Valley. Dr. Lee represented himself and participated by telephone from Hangzhou, China.

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. 2017); COMAR 10.32.02; COMAR 28.02.01.

### ISSUES

1. Did the Respondent engage in unprofessional conduct in the practice of medicine, fail to complete required continuing medical education hours, and willfully make a false representation when making an application for licensure? If so,
2. What sanctions are appropriate?

### SUMMARY OF THE EVIDENCE

#### Exhibits

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

- Bd. Ex. 1 - Maryland Board of Physicians Report of Investigation, September 25, 2017
- Bd. Ex. 2 - Maryland Board of Physicians Practitioner Profile System, September 25, 2017
- Bd. Ex. 3 - Maryland Board of Physicians Memo to File, to Maureen Sammons from Rhonda Anderson, April 19, 2017

- Bd. Ex. 4 - Letter to Dr. Lee from Lily Schmulowitz, April 28, 2017
- Bd. Ex. 5 - Letter to Dr. Lee from Lily Schmulowitz with attached Consent Order, May 24, 2017
- Bd. Ex. 6 - Emails between Dr. Lee and Ms. Schmulowitz, June 9, 2017
- Bd. Ex. 7 - Emails between Dr. Lee and Ms. Schmulowitz with attached Consent Order, June 15, 2017
- Bd. Ex. 8 - Emails between Dr. Lee and Ms. Schmulowitz, dates ranging from June 9, 2017 to June 15, 2017
- Bd. Ex. 9 - Emails between Dr. Lee and Ms. Schmulowitz, dates ranging from June 14, 2017 to June 15, 2017
- Bd. Ex. 10 - Emails between Dr. Lee and Ms. Schmulowitz, June 15, 2017
- Bd. Ex. 11 - Emails between Dr. Lee and Ms. Schmulowitz, dates ranging from June 23, 2017 to June 26, 2017
- Bd. Ex. 12 - Emails between Dr. Lee and Ms. Schmulowitz, June 26, 2017
- Bd. Ex. 13 - Emails to Dr. Lee from Ms. Schmulowitz, dates ranging from July 5, 2017 to July 28, 2017
- Bd. Ex. 14 - Maryland Board of Physicians License Renewal, September 3, 2016
- Bd. Ex. 15 - AMA Physician Profile, September 25, 2017
- Bd. Ex. 16 - Board Certified Docs, September 25, 2017

I admitted the following exhibit into evidence on behalf of the Respondent:

- Resp. Ex. 1 - Letter To Whom It May Concern from Qichun Wei, M.D., Ph.D., May 15, 2018

#### Testimony

The Board presented testimony from the following Board employees:

Rhonda Anderson, Supervisor of Customer Service Unit

Lily Schmulowitz, Compliance Analyst Associate.

The Respondent testified in his own behalf.

## PROPOSED FINDINGS OF FACT

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

1. At all times relevant to this proceeding, the Respondent was a licensed physician in the State of Maryland. The Respondent was initially licensed to practice medicine in Maryland on August 6, 1979 under License Number D24031. The Respondent's license is currently active and is scheduled to expire on September 30, 2018.

2. The Respondent has not practiced medicine in Maryland for several years and does not intend to renew his license when it expires.

3. The Respondent was required to earn at least fifty credit hours of Category I continuing medical education (CME) during the two-year period immediately preceding the submission of his application for license renewal. A maximum of ten of those hours can be from preceptorship at an LCME<sup>2</sup> accredited university, which includes case presentation and ongoing evaluation to medical students.

4. On September 3, 2016, the Respondent submitted an online License Renewal Application (Application).

5. The Respondent electronically signed the Application, which contained the following certification: "I certify that I have personally reviewed all responses to the items in this application and that the information I have given is true and correct to the best of my knowledge and that any false information provided as part of my application may be cause for the denial of my application." (Bd. Ex. 14).

6. In the Application, the Respondent was given the choice to check one of three answers under the section "Continuing Medical Education." The Respondent checked the box

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<sup>2</sup> LCME means "Liaison Committee on Medical Education, an organization that accredits programs in medical education leading to the doctor of medicine degree in the United States and territories and, in cooperation with the Committee on Accreditation of Canadian Medical Schools, in Canada." COMAR 10.32.01.02(b)(17).



which included the following: "CME met. I have earned at least 50 credit hours of Category 1 continuing medical education (CME) during the two-year period immediately preceding the submission of my application for license renewal." (Bd. Ex. 14).

7. The Respondent was informed as soon as he began filling out the Application that he had been selected for a random audit. The Respondent received an electronic notice when he submitted the Application that he was required to submit documentation to the Board of his CME hours within fifteen days.

8. On March 7, 2017, Board staff mailed a letter to the Respondent informing him that his CME documentation was due to the Board on April 7, 2017. The Respondent did not respond to that letter.

9. On April 28, 2017, Lily Schmulowitz, a Board Compliance Analyst, sent a letter via mail and electronic mail to the Respondent informing him that he had still not submitted documentation of his CME hours in accordance with the CME audit. The letter informed the Respondent if he did not submit his CME documentation on or before May 15, 2017, the Board's investigation would continue regarding a possible violation of section 14-404 of the Health Occupations Article. The Respondent did not respond to that letter.

10. On May 24, 2017, Ms. Schmulowitz mailed a letter to the Respondent informing him the Board had opened a case against him for his failure to provide documentation of his CME hours and for falsely documenting he had completed those hours. The letter attached a proposed Consent Order, offering the Respondent an opportunity to resolve the matter through an expedited process. The Consent Order provided for the Respondent to pay a \$5,000 fine, representing \$100 per missing CME credit hour.

11. On June 9, 2017, the Respondent contacted Ms. Schmulowitz by telephone requesting additional time to obtain documentation of CME credits he believed he had earned for

teaching he had done at ZheJiang University School of Medicine in China. Ms. Schmulowitz gave the Respondent an extension until June 28, 2017 to submit documentation.

12. On June 13, 2017, the Respondent emailed documentation to Ms. Schmulowitz in Chinese from a Professor Wei regarding the Respondent's CME hours. The Respondent wrote "[h]opefully someone can read it for you." (Bd. Ex. 8). The Respondent provided a summary in English explaining that the Chinese letter referenced his teaching activities during a six-week period from September to December 2015.

13. The Board determined and Ms. Schmulowitz informed the Respondent by telephone that the Respondent's letter did not meet the requirements of CME documentation.

14. On June 15, 2017, the Respondent emailed Ms. Schmulowitz a translation he made himself of Professor Wei's letter to the Board. The Respondent's translation detailed the Respondent's activities of teaching, making rounds, and providing English language assistance to many departments throughout the ZheJiang University School of Medicine. The letter also generally stated the Respondent attended many multi-discipline Tumor Boards.

15. On July 5, 2017, Ms. Schmulowitz emailed the Respondent informing him that it was his obligation to submit a certified translation of any documents he wished to submit to the Board in a language other than English. The letter also stated that even if the Respondent's own informal translation was accepted, the Respondent would not have met CME requirements because ZheJiang University is not an LCME accredited university and in any event only a maximum of ten hours within a two-year period could be earned performing as a preceptor to medical students. The letter stated the Respondent was able to submit the information to the AMA to determine if it would provide credit for his work. The Board stated it was amenable to a forty-five day extension.

16. On July 28, 2017, Board staff emailed the Respondent and asked him to accept or decline the Consent Order by August 5, 2017. The Respondent did not respond to that letter.

## DISCUSSION

### The Board's Charges

The Board charged the Respondent with violating the CME requirements of the Medical Practice Act and its corresponding regulations. The Medical Practice Act provides, in pertinent part, as follows:

(d) *Continuing education.* –

(1) In addition to any other qualifications and requirements established by the Board, the Board may establish continuing education requirements as a condition to the renewal of licenses under this section.

...

(6) The Board may impose a civil penalty of up to \$100 per continuing medical education credit in lieu of a sanction under § 14-404 of this title, for a first offense, for the failure of a licensee to obtain the continuing medical education credits required by the Board.

Md. Code Ann., Health Occ. § 14-316(d) (Supp. 2017).

A physician is required to renew his or her license every two years. COMAR 10.32.01.08B. A physician applying for renewal is required to complete the CME requirements that are laid out in COMAR 10.32.01.10. COMAR 10.32.01.08H.

That regulation in turn outlines the CME requirements and the requirements regarding documentation:

C. Requirements.

(1) In accordance with the requirements specified in §C(2) of this regulation, an applicant shall earn at least 50 credit hours of Category I CME during a 2-year period.

...

D. On the application form for renewal or reinstatement, the applicant shall attest to the fact that the applicant has completed the CME requirement.

E. Documentation of CME Credits.

- (1) The applicant has the affirmative obligation to obtain the requisite documentation of CME attendance and retain this documentation for the succeeding 6 years for possible inspection by the Board.
- (2) The required documentation of attendance at a CME program as described in § C(2)(a) and (b) of this regulation shall be a certificate or other documentation of attendance which shall:

- (a) Contain at a minimum the:
  - (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 number of designated or prescribed CME credit hours, and
  - (vi) Documented verification of successful completion by stamp, signature, hospital printout, or other official proof; and
- (b) Demonstrate that the CME activity fell within a 2-year period.

- ...
- (5) The required documentation for service as a preceptor is one of the following:

- (a) Documentation from the respective course masters for medical students; or
- (b) Documentation from the training director for postgraduate trainees.

COMAR 10.32.01.10.

The Board also charged the Respondent with violating two subsections of section 14-404 of the Health Occupations Article. That statute provides grounds for reprimand, probation, suspension or revocation of a license for violations of the Maryland Practice Act, including the following:

(a) *In general.* – Subject to the hearing provisions of § 14-405 of this subtitle, a disciplinary panel, on the affirmative vote of a majority of the quorum of the disciplinary panel, may reprimand any licensee, place any licensee on probation, or suspend or revoke a license if the licensee:

- (1) Fraudulently or deceptively obtains or attempts to obtain a license for the applicant or licensee or for another;

(2) Fraudulently or deceptively uses a license;

(3) Is guilty of:

...

(ii) Unprofessional conduct in the practice of medicine;

...

(36) Willfully makes a false representation when seeking or making application for licensure or any other application related to the practice of medicine

Md. Code Ann., Health Occ. § 14-404(a)(3) & (36) (Supp. 2017).

### **Burden of Proof**

The State (which is prosecuting the charges for the Board), as the moving party, has the burden of proof, by a preponderance of the evidence. Md. Code Ann., State Gov't § 10-217 (2014); Md. Code Ann., Health-Occ. § 14-405 (Supp. 2017); *Comm'r of Labor and Indus. v. Bethlehem Steel Corp.*, 344 Md. 17, 34 (1996) (citing *Bernstein v. Real Estate Comm'n*, 221 Md. 221, 231 (1959)). For the reasons set forth below, I conclude that the State has met that burden on all of the Board's charges.

### **The Parties' Positions**

The Respondent was required to renew his license to practice medicine every two years. The State presented testimony and documents to establish that at the time the Respondent renewed his license, he was required to certify to the Board that he had earned fifty hours of CME within the prior two-year period. When he submitted his application, he was informed he had been selected for audit and was required to submit written documentation of those CME hours.

The State acknowledges the Respondent eventually, after much delay, submitted an email he purported would document his CME hours. That document, however, was in Chinese. The State argues that COMAR 10.32.01.04G specifically provides that if, when applying for a license, a physician relies of documentation in a language other than English, the applicant shall submit a

certified translation and the applicant shall bear the cost of that certified translation. The Respondent emailed the Board a summary of the Chinese letter, and later what he proffered was a translation of the document. The State argues that even if it were to accept the Respondent's own non-certified translation, the letter did not establish proper documentation of fifty CME hours. In particular, the regulations only allow for ten of the fifty required hours to be preceptorship. As to the hours referred to in the letter other than preceptorship, the letter makes no mention of the dates of the programs, titles, who taught the programs, or any of the other particulars of documentation required by the regulations.

The Respondent apologized to the Board for his lack of response in this matter. He testified that he was in China for a significant portion of this relevant time period, and that he had no access to his regular U.S. Mail while he was out of the country. He also testified that his yahoo email account was frequently blocked in China. He testified that he began corresponding with the Board regularly once he was back in the United States.

The Respondent took issue with the Board's refusal to accept the Chinese language documentation. He testified that while the Board made some efforts to translate his letter, it did not resolve the language problems and he felt the Board could have made additional efforts. The Respondent testified and argued that the Board demonstrated prejudice to him and the Chinese language, and if he had been engaged in these identical teaching activities at a hospital in London, everything would have been in English and these problems would not have occurred.

The Respondent submitted into evidence at the hearing a letter written in English, dated May 15, 2018. (Resp. Ex. 1). The letter was from Dr. Wei, the Chairman of Radiation Oncology at ZheJiang University School of Medicine, the same doctor who wrote the letter in Chinese for the Respondent that the Respondent submitted to the Board in June 2017. The letter detailed the

Respondent's activities at ZheJiang University School of Medicine for six weeks between September and December 2015 when the Respondent served as a volunteer faculty member.

The Respondent testified that his activities at the ZheJiang University School of Medicine satisfied the CME requirements. He stated that he was a CME director while he was at Georgetown University Hospital and understands what is required of him. The Respondent testified that in addition to preceptorship of medical students, he also took part in many conferences, including one on liver cancers. He said that he learned a lot and enjoyed that conference so much he changed his schedule to stay for an extra conference. The Respondent also testified he learned quite a bit when he translated documents for physicians outside of his specialty. He said he has benefited greatly and has more than met the fifty hour CME requirement.

Finally, the Respondent testified he has not practiced in Maryland for several years and has no intention to do so in the future. However, he wishes to contest this action because he views it as a stain on his long and otherwise distinguished career.

### Analysis

#### Failure to Complete and Document CME Hours – Health Occ. Art. § 14-316; COMAR 10.32.01.08; and COMAR 10.32.01.10

A physician is required to renew his or her license every two years and at the time of that renewal to document completion of fifty CME hours. Md. Code Ann., Health Occ. § 14-316(d) (Supp. 2017). COMAR 10.32.01.08B; 10.32.01.08H; 10.32.01.10E(1) ("The applicant has the affirmative obligation to obtain the requisite documentation of CME attendance and retain this documentation for the succeeding 6 years for possible inspection by the Board.").

On September 3, 2016, the Respondent filled out an online license renewal Application. At that time, the Respondent was informed he had been selected for an audit and was required to submit documentation of his CME hours to the Board within fifteen days. The Respondent failed to do so. The Board sent him repeated notices and reminders, to no avail. The Respondent testified he did not

respond to the Board in a timely manner because he had no access to his mail while he was in China and that his email was blocked. It is the Respondent's responsibility to keep the Board apprised of his current address and to ensure that he receives his mail by forwarding or otherwise. In any event, the Board indicated its willingness to accept late documentation from the Respondent, after he finally got in touch with it on June 9, 2017, after the Board had already opened a disciplinary case against the Respondent.

The regulations provide detailed information regarding the required contents of proper CME documentation. The regulations provide that appropriate documentation shall be a certificate or other documentation of attendance that contains, at a minimum, the program title, sponsor's name, physician's name, inclusive date or dates and location of CME event, category designation and number of prescribed CME credit hours, and documented verification of successful completion by stamp, signature, hospital printout, or other official proof. COMAR 10.32.01.10E(2)(a). The regulations further require that the documents demonstrate that the CME activity fell within the two-year period immediately preceding submission of the renewal application. COMAR 10.32.01.10E(2)(b).

The Respondent submitted to the Board a letter from Dr. Wei, the chairman of Radiation Oncology at ZheJiang University School of Medicine, where the Respondent spent six weeks as a volunteer faculty member in 2015. (Bd. Ex. 8). The Respondent wrote to the Board that the letter "outlines the nature of my voluntary teaching activities during that period of time," and given that it was in Chinese, that "[h]opefully someone can read it for you." (Bd. Ex. 8).

Ms. Schmulowitz testified she informed the Respondent, pursuant to COMAR 10.32.01.04(G), that an applicant submitting documentation to the Board in a language other than English was required to submit a certified translation and that the expense of that translation be



borne by the Applicant. In response, the Respondent submitted his own non-certified translation of the document. (Bd. Ex. 10).

The regulation cited by the Board actually refers to documentation submitted to support an application for an initial license, not for a license renewal. COMAR 10.32.01.04. There is nothing in the regulations about submission of documents not in the English language for a license renewal or for documentation of CME hours. COMAR 10.32.01.08, 10.32.01.10. It certainly makes sense for the Board to rely on COMAR 10.32.01.04 as a regulation addressing a very similar analogous situation – that is submission of documents in support of an initial application in a language other than English. The Board might be overwhelmed if it were expected to translate any and all documentation submitted to it in any number of languages other than English. It seems perfectly reasonable to impose an across-the-board requirement upon initial and renewal applicants to provide documentation in a language that can easily be reviewed for compliance by Board staff. In any event, it is not necessary for me to determine whether COMAR 10.32.01.04 applies to renewal as well as initial applicants, or whether the Respondent's own non-certified translation satisfied the Board's documentation requirements, because the Board presented evidence that even if it had accepted the Respondent's translation, or the English language document he submitted at the hearing, the documentation did not satisfy the CME requirements.

I conclude the Board acted reasonably in rejecting the Respondent's proffered documentation of fifty CME hours in the two years prior to the Application. The Respondent's documentation states the Respondent "took an active part in the education of resident physicians, medical students as well as the nursing staff." (Resp. Ex. 1). Ms. Schmulowitz testified, and her testimony was not contradicted in any way by the Respondent, that activities such as these fall within the category of preceptorship. The regulations provide that the Respondent was entitled to a maximum of ten credit hours, of the fifty CME hours required, for preceptorship activities.

COMAR 10.32.01.10(2)(f). Moreover, those activities are only covered when performed at an LCME accredited university, which ZheJiang University School of Medicine was not.

The Respondent's translated letter and the English language letter also address the Respondent's "active participation in many of the medical school's and hospital's weekly multi-disciplinary conferences, where experts from radiation oncology, medical oncology, various surgical subspecialties, pathology, radiology (CT, MRI, PET, etc.), ultrasound and other disciplines will jointly discuss actual cases of patient management." (Resp. Ex. 1). The letter stated the sessions are usually slotted for two hours each and that an "estimate would put the total number of these CME hours to be at least 60 for the duration Prof Lee spent at our institution." (Resp. Ex. 1). Finally, the documentation references the "tens of hours Prof. Lee contributed, in the evenings and weekends, to the plethora of research papers in many different specialties at our institution not only in oncology, but also in anesthesiology, radiology, neurosurgery and cardiology, among others." (Resp. Ex. 1). This documentation did not include the Program title, Sponsor's name, the date of each particular event, the number of prescribed CME credit hours for the event or conference, or documented verification of successful completion of the CME activity by stamp, signature, hospital printout, or other official proof. COMAR 10.32.01.10E(2)(a). Instead, the documentation was a general averment the Respondent had met the threshold of fifty CME hours, which is not the type of particular documentation of CME hours the regulations specifically require.

Ms. Schmulowitz testified she gave the Respondent the opportunity to take his documentation to the AMA. She explained that it is the Board's policy to accept for CME any hours that are approved by the AMA. The Respondent did not avail himself of that opportunity. Given these facts, it was perfectly reasonable, and required by their own regulations, for the Board to refuse the Respondent's proffered documentation, and to find he failed to earn the required fifty hours of CME in the two years prior to his Application. As a result of the Respondent's failure to earn fifty CME

credit hours in the two years prior to his September 3, 2016 Application, the State has proven by a preponderance of the evidence the Board's charge that the Respondent violated section 14-316(d) of the Health Occupations Article and also violated COMAR 10.32.01.08 and 10.32.01.10.

**Unprofessional Conduct in the Practice of Medicine and Willfully Making False Representation When Making Application for Licensure – Health Occ. Art. § 14-404(a)(3) and (36)**

The Board has also charged the Respondent with unprofessional conduct in the practice of medicine and willfully making a false representation when making an application for licensure. These allegations are based on the Respondent's failure to complete the required CME activity during the two years prior to his September 3, 2016 Application and making a false representation that he had completed those hours on the Application. The Board contends that these actions constitute unprofessional conduct in the practice of medicine in violation of Section 14-404(a)(3) of the Act, and willfully making false representations on a license renewal application related to the practice of medicine in violation of section 14-404(a)(36) of the Act. Md. Code Ann., Health Occ. §§ 14-404(a)(3) and (36) (Supp. 2017).

The Respondent asserts that he is not guilty of these charges. He claims that he completed the required CME activity, made a good faith attempt to obtain and submit adequate documentation of his CME activity, did not make a false representation, and is not guilty of unprofessional conduct.

Both of these subsections of the Act require the Respondent's alleged conduct have occurred in the practice of medicine. Filing an Application and failing to complete required CME hours does not technically fit within the strict definition of "practicing medicine" in the Act. Md. Code Ann., Health Occ. § 14-101(o)(1-2) (Supp. 2017). Nor is it specifically excluded. *Id.* at § 14-101(o)(3). Maryland courts in recent years have consistently expanded the definition of what constitutes "in the practice of medicine." See *Kim v. Maryland State Bd. of Physicians*, 423 Md. 523, 542-43 (2011) (falsehood regarding pending malpractice action on license renewal application occurred in

the practice of medicine); *Cornfeld v. State Bd. of Physicians*, 174 Md. App. 456, 479 (2007) (upholding discipline of a physician unprofessional conduct in the practice of medicine for making false statements to hospital peer reviewers and to Board investigators); *Finucan v. BPQA*, 380 Md. 577, 601 (2004) (Court held that engaging in sexual relations with a patient under doctor's care also occurred in the practice of medicine when it could be established that a physician's misconduct "was intertwined with patient care in such a manner that it posed a threat to patients and 'diminishe[d] the standing of the medical profession as caregivers.'"); *BPQA v. Banks*, 354 Md. 59 (1999) (upholding discipline of physician for unprofessional conduct in the practice of medicine involving sexual harassment of hospital employees by a physician who was on duty and in the working areas of the hospital). According to this case law, it is clear that the Respondent's actions here of failing to fulfill his CME requirements and certifying on his Application that he had done so, were actions taken while engaging in the practice of medicine.

Not only were the actions taken while engaging in the practice of medicine, but the State has established by a preponderance of the evidence that the Respondent made a willful false representation in his Application. He failed to complete all of his required CME activity. When the Respondent submitted his online application on September 3, 2016, he certified that he had personally reviewed all of his responses in the application, that the information he gave was true and correct to the best of his knowledge, and that any false information provided in the application might be cause for the denial of the Application. (Bd. Ex. 14). The Respondent's actions were taken intentionally, not involuntarily or accidentally, and were therefore "willful." *Kim*, 423 Md. At 546 ("'Willful,' for purposes of § 14-404, requires proof that the conduct at issue was done intentionally, not that it was committed with the intent to deceive or with malice."). As a result, I conclude the Respondent's statement on the online renewal Application that he had earned fifty

credit hours during the renewal period was willful and false because he failed to demonstrate that he had earned all of the required CME credits. Md. Code Ann., Health Occ. § 14-404(a)(36).

The Board has also charged the Respondent with unprofessional conduct in the practice of medicine under section 14-404(a)(3) of the Act. The Respondent's failure to complete all of his CME requirements during the two year period prior to his Application, failure to provide adequate documentation to the Board of compliance with the CME requirements, and his willfully making a false representation on his license renewal application also constitute unprofessional conduct in the practice of medicine. The Board regulates the licensing and practice of all physicians in the State of Maryland and compliance with the Board's CME requirements is mandatory for license renewal. A physician must certify to the Board and demonstrate that he has complied with the CME requirements so the Board can properly determine the physician's fitness for license renewal and so that it can properly protect the public. In carrying out these obligations, the Board must be able to rely on the accuracy and completeness of all information that physicians provide to the Board. Consequently, the failure to complete all CME requirements and the submission of false information to the Board on a license renewal application also constitutes unprofessional conduct in the practice of medicine as it relates to the effective delivery of patient care, because it diminishes the standing of the medical profession as caregivers and ties the physician's misconduct to the proper exercise of his medical judgment and duties.

The Board and the courts have recognized that the failure to comply with all licensing requirements that relate to patient care, and the submission of false information to the Board through statements, testimony, and in applications, constitutes unprofessional conduct in the practice of medicine. *Kim*, 423 Md. App. at 538-543. The Respondent had a professional obligation to comply with all CME requirements and provide truthful and complete responses to the Board, and he failed in those obligations.

For the foregoing reasons, I conclude that the Respondent's failure to comply with the Board's CME requirements, and the Respondent's failure to provide accurate and complete responses on his license renewal application regarding his completion of CME activity also constitutes unprofessional conduct in the practice of medicine in violation of the Act. Md. Code Ann., Health Occ. § 14-404(a)(3).

### Sanctions

Having found that the Respondent violated each of the sections charged under the Medical Practice Act and the COMAR regulations, I shall consider the appropriate sanction to be imposed. The Board has stated it seeks to impose a disciplinary reprimand against the Respondent. Md. Code Ann., Health Occ. § 14-404(a) (Supp. 2017); COMAR 10.32.02.09A-B; COMAR 10.32.02.10. The State presented no evidence the Respondent has ever been the subject of any prior disciplinary actions. By all accounts, the Respondent has had a long and otherwise unblemished medical career in Maryland. As the regulations allow for the lowest form of discipline here – a reprimand – I see no reason to deviate from the Board's recommendation.

Under the applicable law, the Board also may impose a fine instead of or in addition to disciplinary sanctions against a licensee who is found to have violated section 14-404. Health Occ. § 14-405.1(a) (2014); COMAR 10.32.02.09E. In this case, the Board is seeking a fine of \$10,000 fine, which is states is the lowest possible fine allowed per regulation for a violation of this type. The regulations regarding fines for CME violations are as follows:

#### E. Offenses Related to Continuing Medical Education Credits.

##### (1) First Offense of Failure to Document Credits.

(a) Except as provided in §E(2) or (3) of this regulation, if a licensee has submitted an application claiming the completion of continuing medical education credits and the licensee fails to document the completion of such continuing medical education credits when audited by the Board, the disciplinary panel may impose a civil fine under Health Occupations Article, §14-316(d)(5), 14-5A-13(d)(2), 14-5B-12(d)(2), 14-5D-12(g), or

15-307(f), Annotated Code of Maryland, of up to \$100 per missing continuing medical education credit in lieu of a sanction under Health Occupations Article, §14-404, 14-5A-17, 14-5B-14, 14-5D-14, or 15-314, Annotated Code of Maryland.

(b) Section E(1)(a) of this regulation does not limit the Board's or disciplinary panel's authority to require completion of the missing continuing medical education credits.

(2) Willful Falsification.

(a) If a licensee has willfully falsified an application with respect to continuing medical education credits, the licensee may be charged under one or more of the following, as appropriate:

(i) Health Occupations Article, §14-404(a)(3), 14-5A-17(a)(3), 14-5B-14(a)(3), 14-5C-17(a)(3), 14-5D-14(a)(3), 14-5E-16(a)(3), 14-5F-18(a)(19), or 15-314(a)(3), Annotated Code of Maryland;

(ii) Health Occupations Article, §14-404(a)(11), 14-5A-17(a)(10), 14-5B-14(a)(10), 14-5C-17(a)(10), 14-5D-14(a)(10), 14-5E-16(a)(10), 14-5F-18(a)(9), or 15-314(a)(11), Annotated Code of Maryland; and

(iii) Health Occupations Article, §14-404(a)(36) or 15-314(a)(36), Annotated Code of Maryland.

(b) Upon a finding of a violation, the disciplinary panel may impose any discipline authorized under Health Occupations Article, §14-404(a), 14-405.1, 14-5A-17, 14-5B-17, 14-5C-17, 14-5D-14, 14-5E-16, 14-5F-18, 15-314, or 15-316, Annotated Code of Maryland, and the sanctioning guidelines.

COMAR 10.32.02.09E.

The Respondent's actions constituted both a first violation as well as a willful violation. Thus, COMAR 10.32.02.09E(2)(b) applies. That regulation states that the Board may impose a fine pursuant to section 14-405.1 and the sanctioning guidelines, which are found in COMAR 10.32.01.10. That regulation in turn provides that the minimum fine for unprofessional conduct consisting of attesting to earning but failing to earn required CME credit hours and willfully filing a false application with the Board is \$10,000.00.

While COMAR 10.32.02.09E(1) specifically addresses the possibility of a civil fine imposed pursuant to section 4-316(d) of the Health Occupation Article, COMAR 10.32.02.09E(2)(b)

noticeably does not. The maximum fine that could be imposed pursuant to section 4-316(d) would have been \$5,000.00, or \$100 per missing CME credit hour. As the minimum fine under COMAR 10.32.02.09E(2)(b) and the sanctioning guidelines at COMAR 10.32.02.10 is \$10,000.00, it is clear the Board intended to treat more seriously willful violations of the CME requirements. This is reasonable, especially that here the violation was not only the failure to obtain the CME credit hours, but to willfully and falsely represent to the Board that he had done so, certainly a more egregious action. I find no reason to deviate from the Board's recommendation.

### PROPOSED CONCLUSIONS OF LAW

Based on the foregoing Findings of Fact and Discussion, I conclude as a matter of law that the Respondent violated sections 14-316(d), and 14-404(a)(3) and (36) of the Medical Practice Act, and COMAR 10.32.01.08 and 10.32.01.10.

I further conclude that the Respondent is subject to disciplinary sanctions of reprimand for the cited violations. Md. Code Ann., Health Occ. § 14-404(a); *Id.*; COMAR 10.32.02.09A-B.

I further conclude that the Respondent is subject to a fine of \$10,000.00 for the cited violations. Md. Code Ann., Health Occ. § 14-405.1(a)(2) (2014); COMAR 10.32.02.09E(2)(b); COMAR 10.32.02.10.

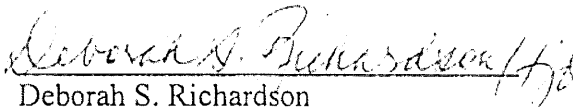
### PROPOSED DISPOSITION

I **PROPOSE** that charges filed by the Maryland State Board of Physicians against the Respondent on November 7, 2017 be **UPHELD**; and

I **PROPOSE** that the Respondent be sanctioned by reprimand; and

I **PROPOSE** that the Respondent be ordered to pay a fine of \$ 10,000.00.

September 24, 2018  
Date Decision Issued

  
Deborah S. Richardson  
Administrative Law Judge

DSR/cmg  
# 175736



## NOTICE OF RIGHT TO FILE EXCEPTIONS

Any party adversely affected by this proposed decision may file written exceptions with the disciplinary panel of the Maryland State Board of Physicians that delegated the captioned case to the Office of Administrative Hearings (OAH), and request a hearing on the exceptions. Md. Code Ann., State Gov't § 10-216(a) (2014); COMAR 10.32.02.05. Exceptions must be filed within fifteen (15) days of the date of issuance of this proposed order. COMAR 10.32.02.05B(1). The exceptions and request for hearing must be addressed to the Disciplinary Panel of the Board of Physicians, 4201 Patterson Avenue, Baltimore, MD, 21215-2299, Attn: Christine A. Farrelly, Executive Director.

A copy of the exceptions should be mailed to the opposing attorney, and the other party will have fifteen (15) days from the filing of exceptions to file a written response addressed as above. *Id.* The disciplinary panel will issue a final order following the exceptions hearing or other formal panel proceedings. Md. Code Ann., State Gov't §§ 10-216, 10-221 (2014); COMAR 10.32.02.05C. OAH is not a party to any review process.

### Copies Mailed To:

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