

**IN THE MATTER OF
AUGUSTUS H. HILL, M.D**

Respondent

License Number: D27931

*** BEFORE THE
* MARYLAND STATE
* BOARD OF PHYSICIANS
* Case Number: 2219-0174B**

* * * * *

FINAL DECISION AND ORDER

INTRODUCTION AND PROCEDURAL HISTORY

On April 24, 2018, Augustus H. Hill, M.D., was charged by the Virginia Board of Medicine (“Virginia Board”) with various violations of the Virginia Board’s practice act. On February 15, 2019, after several postponements, the Virginia Board held a hearing that Dr. Hill did not attend, though the Virginia Board found that he had been provided adequate notice. On March 18, 2019, the Virginia Board issued a decision disciplining Dr. Hill for repeatedly ordering unnecessary colonoscopies for four patients, ordering echocardiograms and stress tests for three patients without adequate medical indication, and for refusing to provide information and records to the Virginia Department of Health Professions investigators. The Virginia Board imposed an indefinite suspension on Dr. Hill’s license for a period of not less than twelve months.

Dr. Hill failed to report the pending Virginia charges, issued on April 24, 2018, on his September 12, 2018 license renewal application with the Maryland State Board of Physicians (“Board”). On October 21, 2019, Disciplinary Panel B of the Board issued charges against Dr. Hill alleging that he fraudulently or deceptively obtained or attempted to obtain a license, Health Occ. § 14-404(a)(1), unprofessional conduct in the practice of medicine, Health Occ. § 14-404(a)(3)(ii), and willfully making a false representation when seeking or making application for

licensure, Health Occ. § 14-404(a)(36). The Board also charged Dr. Hill with being disciplined by a licensing or disciplinary authority for an act that would be grounds for disciplinary action in Maryland, Health Occ. § 14-404(a)(21). The grounds for discipline in Maryland include: Health Occ. § 14-404(a)(3)(ii), unprofessional conduct in the practice of medicine; § 14-404(a)(19), grossly overutilizes health care services; § 14-404(a)(22), fails to meet appropriate standards for the delivery of quality medical or surgical care; and § 14-404(a)(33), fails to cooperate with a lawful investigation.

The case was referred to the Office of Administrative Hearings (“OAH”) for a hearing before an Administrative Law Judge (“ALJ”). On May 14, 2020, the State filed a motion in limine to, among other things, exclude evidence from Dr. Hill collaterally attacking the findings of the Virginia Board related to notice and sufficiency of the evidence. Dr. Hill filed an opposition on May 29, 2020. On June 1, 2020, after an oral presentation by the parties, the ALJ granted the motion and excluded such evidence. On June 5, 2020, the evidentiary hearing was held before the ALJ at OAH. At the hearing, the parties jointly introduced 10 exhibits. The State presented testimony from a Board health policy analyst and Dr. Hill testified on his own behalf. At the hearing, Dr. Hill conceded to the allegations in the Charges and the ALJ, therefore, accepted the allegations of the Charges as proven.

On July 27, 2020, the ALJ issued a proposed decision concluding that Dr. Hill violated Health Occ. § 14-404(a)(1), (3)(ii), (19), (21), (22), (33), and (36). The ALJ recommended a sanction of an indefinite suspension of Dr. Hill’s medical license for a period not less than twelve months and a fine of \$5,000. Dr. Hill filed exceptions with Board Disciplinary Panel A (“Panel A”), and the State filed a response to the exceptions. On November 4, 2020, the Board held an exceptions hearing remotely via the Zoom platform.

FINDINGS OF FACT

In his written exceptions, Dr. Hill does not take exception to the ALJ's Proposed Findings of Fact. The ALJ found that Dr. Hill intentionally answered falsely that he did not have pending charges in his license renewal application. Further, it is undisputed that the Virginia Board disciplined Dr. Hill for various violations of the Virginia practice act. The Panel adopts the ALJ's Proposed Findings of Fact. The ALJ's Proposed Findings of Fact (pages 5-10, numbered paragraphs 1-20) are incorporated by reference into the body of this document as if set forth in full. *See* attached ALJ Proposed Decision, Exhibit 1. The Findings of Fact were proven by the preponderance of the evidence.

DISCUSSION

In the motion in limine filed at OAH, the State sought to preclude Dr. Hill's collateral attack on the 2019 Virginia Board Order, which disciplined Dr. Hill. Dr. Hill filed a written opposition in response. After an oral presentation by both parties, the ALJ granted the motion and excluded all evidence that would collaterally challenge the 2019 Virginia Board Order. Dr. Hill filed exceptions arguing that the ALJ erred in granting the motion in limine and challenging the term of the sanction.

At the OAH hearing, Dr. Hill "conceded to the charges," essentially admitting to the charges as they are set forth in the charging document. Dr. Hill provided mitigating evidence in support of reducing the sanction. Dr. Hill admitted that his renewal application contained false statements because he failed to report his pending disciplinary charges from Virginia and that he was wrong to answer the question incorrectly. Dr. Hill did not provide any excuse for his false statements. The facts and disciplinary grounds related to his failure to report were undisputed and unchallenged. Dr. Hill also conceded that he was disciplined in Virginia for acts that would

be grounds for discipline in Maryland. Dr. Hill argues that the ALJ erred in granting the motion in limine, which prevented him from admitting evidence to challenge the factual findings and legal conclusions from the Virginia Board decision.

Analysis

In reciprocal discipline cases, Maryland Courts accept the factual findings and adjudications of the misconduct in the other jurisdiction as conclusive evidence and do not permit the relitigation of the facts in the underlying jurisdiction. *Attorney Grievance Comm. of Maryland v. Burghardt*, 442 Md. 151, 157 (2015) (in reciprocal discipline cases the factual findings of the originating jurisdiction are treated as conclusive evidence of misconduct); *Attorney Grievance Comm. of Maryland v. Scroggs*, 387 Md. 238, 249 (2005) (“a respondent is not allowed, other than provided by our rules, to collaterally attack either the findings of fact or the judgment rendered by the original jurisdiction”); *Attorney Grievance Comm’n of Maryland v. Richardson*, 350 Md. 354 (1998) (in reciprocal disciplinary proceedings, attorney cannot attack or revisit the findings of fact made in the Florida court in the Florida disciplinary proceeding); *Attorney Grievance Comm. of Maryland v. Sabghir*, 350 Md. 67, 68 (1998) (respondent may not “collaterally attack findings of fact made by the New York court or the judgment it rendered.”).

Other states also preclude challenging “reciprocal discipline” before a professional licensing board. *Shoenhair v. Com. Dept. of State Bureau of Professional and Occupational Affairs*, 459 A.2d 877, 879 (Pa. Commw. Ct. 1983) (Petitioner cannot collaterally attack the waiver of rights to a Florida hearing); *Weiss v. New Mexico Bd. of Dentistry*, 110 N.M. 574, 585 (1990) (Dr. Weiss “may not collaterally attack his conviction in a disciplinary proceeding before an administrative board which is totally without jurisdiction to determine the validity of the conviction, or to overturn or vacate it.”); *In re Zdravkovich*, 831 A.2d 965, 968-69 (D.C. 2003)

(holding that D.C. has adopted a rigid standard for reciprocal bar discipline cases and noting that “reciprocal discipline proceedings are not a forum to reargue the foreign discipline” and the respondent “is not entitled to relitigate or collaterally attack the findings or judgment of the Maryland Court of Appeals.”)

Dr. Hill argues before the Panel that his case is different from the above-cited cases in Maryland and in other States because he never participated in the proceedings that gave rise to the reciprocal discipline, never received actual notice, and was never afforded the opportunity to defend himself in the underlying Virginia case.

First, Dr. Hill notes that in each cited case by the State and ALJ, the regulated professional either agreed to the underlying discipline in a consent order or participated in a hearing. He argues that none of the cases cited by the State and ALJ were default judgments in the original state of discipline, like his.¹ Dr. Hill’s argument that States do not impose reciprocal discipline for default judgments is incorrect. *See In re Disciplinary Action against Wolff*, 810 N.W.2d 312, 316-17 (Minn. 2012) (disbarring an attorney in Minnesota in a reciprocal action arising from a default order in Arizona); *In re Christenson*, 940 A.2d 84, 84 n.1 (D.C. 2007) (imposing reciprocal discipline based on a California default judgment when the respondent failed to respond to the notice of disciplinary charges and failed to file a motion to set aside the default judgment); *In re Feigenbaum*, 951 A.2d 754, 756 (D.C. 2008) (imposing reciprocal

¹ Confusingly, Dr. Hill cites two Massachusetts cases for this proposition that do not concern default judgments. *Ramirez v. Massachusetts Board of Registration in Medicine*, 806 N.E.2d 410 (Mass. 2004); *Annuservice v. Massachusetts Board of Registration in Dentistry*, 889 N.E.2d 953 (Mass 2008). Both Massachusetts cases concern whether a state may consider consent orders as disciplinary actions for purposes of reciprocal action and may not collaterally attack such consent orders. *Ramirez*, 806 N.E.2d at 413-14; *Annuservice*, 889 N.E.2d at 961. Both cases find that such consent orders should be upheld as valid. *Id.* It appears that Dr. Hill cites these cases because they were not claiming an unfair process, as Dr. Hill does. However, neither case makes any holding regarding default judgments, nor does either case address default judgments in dicta. The cases merely clarify that consent orders are distinguishable from cases where a hearing was held. These cases do not support Dr. Hill’s contentions.

discipline after California imposed discipline after the respondent failed to respond to a motion for entry of default).

Next, Dr. Hill argues that he should not be subject to reciprocal discipline here, when he did not receive actual notice and therefore was never afforded the opportunity to defend himself in the Virginia action. Dr. Hill relies upon the Maryland Rules pertaining to Attorney Grievance cases which allow challenges to reciprocal discipline in exceptional circumstances.² Maryland Rule 19-737(e).³ Pursuant to Maryland Rule 19-737(e), to avoid reciprocal discipline, the attorney or Bar Counsel must prove by clear and convincing evidence that “the procedure was so lacking in notice or opportunity to be heard as to constitute a deprivation of due process” or such an “infirmity of proof” to give rise to a clear conviction that the Court cannot accept the determination of misconduct.” Maryland Rule 19-737(e)(1) and (2). This rule does not pertain to professional licensing cases outside of attorney grievance matters. The reciprocal grounds under the Maryland Board’s statute, Health Occ. § 14-404(a)(21), does not contain the same opportunity to make a collateral challenge for due process concerns. Virginia is the only venue to challenge the sufficiency of due process provided by the Virginia Board, not Maryland. Indeed, Dr. Hill appealed the Virginia Order in Henrico County Circuit Court, but the Virginia Court dismissed his appeal of the Virginia Board’s Order. Panel A agrees with the State’s argument that the Henrico County Circuit Court’s dismissal of Dr. Hill’s claims was the end of Dr. Hill’s ability to challenge the Virginia’s Board Order.⁴

² Dr. Hill also cites a nearly identical provision in the District of Columbia (D.C. Bar Rule XI, § 11(c)) and cites a D.C. case where that provision was discussed but was not applied. *In re Zdravkovich*, 831 A.2d 965 (D.C. 2003).

³ Dr. Hill incorrectly cites to Maryland Rule 19-773. The prior iteration was Rule 16-773 and the current rule is Rule 19-737.

⁴ The State also argues that Dr. Hill is precluded from challenging the reciprocal discipline because he waived the issue when he stipulated at the OAH hearing that the Virginia Board action imposed a violation that would be a violation in Maryland. The Panel declines to find a waiver here. Dr. Hill was

CONCLUSIONS OF LAW

Disciplinary Panel A concludes, as a matter of law, that Dr. Hill fraudulently or deceptively obtained or attempted to obtain a license, in violation of Health Occ. § 14-404(a)(1), was guilty of unprofessional conduct in the practice of medicine, in violation of Health Occ. § 14-404(a)(3)(ii), and willfully made a false representation when seeking or making application for licensure, in violation of Health Occ. § 14-404(a)(36). These grounds were based on the failure to report his pending disciplinary charges on his 2018 renewal application. Disciplinary Panel A also concludes as a matter of law, that Dr. Hill was disciplined by a licensing or disciplinary authority for an act that would be grounds for disciplinary action in Maryland, in violation of Health Occ. § 14-404(a)(21). The Panel concludes that the underlying grounds for the section 14-404(a)(21) violation are: Health Occ. § 14-404(a)(3)(ii), is guilty of unprofessional conduct in the practice of medicine; § 14-404(a)(19), grossly over-utilizing health care services; § 14-404(a)(22), fails to meet appropriate standards as to the delivery of quality medical or surgical care; and § 14-404(a)(33) fails to cooperate with a lawful investigation.

SANCTION

The ALJ recommended a sanction of an indefinite suspension for at least one year and a \$5,000 fine. Dr. Hill argues that he should not be suspended, but, rather, he should be reprimanded and required to receive education through peer mentorship. He argues that the Panel should not consider his prior Board orders in 2003 and 2009 because the deficiencies found in the orders were so long ago and were not related to the present violation. Additionally, he argues that the two violations were his only violations in over 30 years of practice. Next, he argues that he had never been placed on probation in the prior Board cases and that the conduct

prohibited from collaterally challenging the Virginia Board action at the OAH hearing because of the ALJ's grant of the motion in limine. He may challenge the motion in limine before the panel.

at issue in the Virginia case occurred in 2015. Finally, Dr. Hill notes his personal difficulties, and how he has, nevertheless, continued to serve an underserved population.

The State, in its response, notes that the ALJ's proposed sanction is within the sanctioning guidelines and noted Dr. Hill's prior violations in 2003 and 2009 related to quality medical standards and questionable medical decision making. The State also argues that the proposed sanction is commensurate with the Virginia Board's sanction of an indefinite suspension for a minimum of one year and that in reciprocal discipline cases, the disciplinary authority typically follows the sanction imposed by the other jurisdiction, as the ALJ recommended here. *See Attorney Grievance Cmm'n of Md. v. Weiss*, 389 Md. 531, 546-49 (2005). Finally, the State notes that considering Dr. Hill's prior disciplinary history and his dishonesty in failing to report the pending Virginia charges when he applied for licensure renewal should militate towards a higher sanction.

The Panel has considered all the aggravating and mitigating factors and issues raised by the parties. The Panel agrees with the ALJ that the imposition of an identical suspension as the Virginia Board and an additional \$5,000 fine is appropriate for the violations that include fraudulently obtaining a license and making false statements to the Board by failing to report his pending charges on his renewal application and based on his Virginia violation that concerned patient care. The Panel, thus, adopts the ALJ's recommended sanction.

ORDER

Based on the foregoing Findings of Fact and Conclusions of Law, it is, by an affirmative vote of a majority of a quorum of Disciplinary Panel A, hereby

ORDERED that Augustus H. Hill, M.D.'s license to practice medicine in Maryland (License Number D27931) is **SUSPENDED** indefinitely for a minimum of **ONE YEAR**. The suspension goes into effect in 10 business days; and it is further

ORDERED that during the suspension, the Respondent shall comply with the following terms and conditions of the suspension:

(a) During the suspension period, the Respondent shall not:

- (1) practice medicine;
- (2) take any actions after the effective date of this Order to hold himself or herself out to the public as a current provider of medical services;
- (3) authorize, allow or condone the use of the Respondent's name or provider number by any health care practice or any other licensee or health care provider;
- (4) function as a pccr reviewer for the Board or for any hospital or other medical care facility in the state;
- (5) prescribe or dispense medications; or
- (6) perform any other act that requires an active medical license.

(b) The Respondent shall establish and implement a procedure by which the Respondent's patients may obtain their medical records without undue burden and notify all patients of that procedure; and

(c) Within **ONE YEAR**, the Respondent shall pay a civil fine of **FIVE THOUSAND DOLLARS**. 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 terminate Respondent's suspension until the Respondent pays the fine to the Board.

IT IS FURTHER ORDERED that the Respondent shall not apply for early termination of suspension; and it is further

ORDERED that, after the Respondent has complied with all terms and conditions of the suspension and the minimum period of suspension imposed by the Final Decision and Order has

passed, the Respondent may submit a written petition for termination of his suspension. After consideration of the petition, the Respondent's suspension may be administratively terminated through an order of the disciplinary panel if the Respondent has complied with the suspension and has paid the fine and there are no pending complaints relating to the charges; and it is further

ORDERED that Dr. Hill is responsible for all costs incurred in fulfilling the terms and conditions of this Final Decision and Order; and it is further

ORDERED that the effective date of the Final Decision and Order is the date the Final Decision and Order is signed by the Executive Director of the Board. The Board's Executive Director signs the Final Decision and Order on behalf of the Panel; and it is further

ORDERED that, if Dr. Hill allegedly fails to comply with any term or condition imposed by this Order, Dr. Hill shall be given notice and an opportunity for a hearing. If the disciplinary panel determines there is a genuine dispute as to a material fact, the hearing shall be before an Administrative Law Judge of the Office of Administrative Hearings followed by an exceptions process before a disciplinary panel; and if the disciplinary panel determines there is no genuine dispute as to a material fact, Dr. Hill shall be given a show cause hearing before a disciplinary panel; and it is further

ORDERED that after the appropriate hearing, if the disciplinary panel determines that Dr. Hill has failed to comply with any term or condition imposed by this Order, the disciplinary panel may reprimand Dr. Hill, place Dr. Hill on probation with appropriate terms and conditions, or suspend with appropriate terms and conditions, or revoke Dr. Hill's license to practice medicine in Maryland. The disciplinary panel may, in addition to one or more of the sanctions set forth above, impose a civil monetary fine on Dr. Hill; and it is further

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

02/17/2021
Date

Signature on File

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

NOTICE OF RIGHT TO PETITION FOR JUDICIAL REVIEW

Pursuant to Md. Code Ann., Health Occ. § 14-408(a), Dr. Hill has the right to seek judicial review of this Final Decision and Order. Any petition for judicial review shall be filed within thirty (30) days from the date of mailing of this Final Decision and Order. The cover letter accompanying this final decision and 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. Hill 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:

**David Finkler
Assistant Attorney General
Department of Health and Mental Hygiene
300 West Preston Street, Suite 302
Baltimore, Maryland 21201**

Exhibit 1

MARYLAND STATE BOARD OF
PHYSICIANS

v.

AUGUSTUS H. HILL, M.D.

RESPONDENT

LICENSE No.: D27931

* BEFORE SUSAN H. ANDERSON,
* AN ADMINISTRATIVE LAW JUDGE
* OF THE MARYLAND OFFICE
* OF ADMINISTRATIVE HEARINGS
*
* OAH No.: MDH-MBP2-71-20-00799

* * * * *

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 October 21, 2019, the Maryland State Board of Physicians (Board) issued charges against the Respondent under the Maryland Medical Practice Act (Act) for alleged violations of the State law governing the practice of medicine. Md. Code Ann., Health Occ. §§ 14-101 through 14-509, 14-601 through 14-607, 14-701 through 14-702 (2014 & Supp. 2019). Specifically, the Respondent is charged with violating sections 14-404(a)(1) (fraudulently or deceptively obtains or attempts to obtain a license for the applicant or licensee or for another); 14-404(a)(3)(ii) (is guilty of unprofessional conduct in the practice of medicine); 14-404(a)(19) (grossly overutilizes health care services); 14-404(a)(21) (is disciplined by a licensing or disciplinary authority or convicted or disciplined by a court of any state for an act that would be grounds for disciplinary action under this section); 14-404(a)(22) (fails to meet the appropriate standards as determined by appropriate peer review for the delivery of quality medical and surgical care performed in an outpatient surgical

facility, office, hospital, or any other location in this State); 14-404(a)(33) (fails to cooperate with a lawful investigation conducted by the Board or a disciplinary panel); and 14-404(a)(36) (willfully makes a false representation when seeking or making application for licensure or any other application related to the practice of medicine). Code of Maryland Regulations (COMAR) 10.32.02.03E(3)(d).

The disciplinary panel to which the complaint was assigned held a meeting with the Respondent on December 18, 2019 to explore the possibility of resolution. COMAR 10.32.02.03E(9). The parties did not resolve the issues at that time. The disciplinary panel then forwarded the charges to the Office of the Attorney General (State) for prosecution.

On January 9, 2020, the matter was delegated to the Office of Administrative Hearings (OAH) for a hearing. COMAR 10.32.02.03E(9)(b). The Board delegated to the OAH the authority to issue proposed findings of fact, proposed conclusions of law, and a proposed disposition. Md. Code Ann., State Gov't § 10-205(b) (2014); COMAR 10.32.02.04B(1).

On February 6, 2020, I conducted an in-person Scheduling Conference (Conference). At that Conference, I scheduled the hearing to take place at the OAH on April 27, 2020. On March 13, 2020, the State submitted its Pre-Hearing Conference Statement. However, effective March 23, 2020, due to the COVID-19 pandemic, the OAH was closed to the public and all in-person hearings were suspended through mid-May 2020. The suspension was eventually extended through July 3, 2020.

I convened a telephone scheduling conference on May 1, 2020 at which time the parties agreed to a video hearing on June 1, 2020, with a second day on June 2, 2020, if necessary. On May 11, 2020, the Respondent submitted his Pre-Hearing Conference Statement.¹ On May 14,

¹ During the telephone scheduling conference on May 1, 2020, the Respondent indicated that he would file his Pre-Hearing Conference Statement by May 8, 2020 (it was originally due by March 31, 2020). He did not file it until after 4:30 p.m. on May 8, 2020; therefore, it is considered filed as of Monday, May 11, 2020, the next business day. COMAR 28.02.01.04D(3).

2020, the State filed a Motion in Limine (Motion) seeking to exclude the Respondent's eight proposed exhibits as well as any expert testimony from the Respondent and the Respondent's treating psychiatrist, [REDACTED]. In addition, the State sought to exclude any testimony that would be used to collaterally attack the Virginia Board of Medicine's (Virginia Board) March 19, 2019 Order and/or the factual or legal findings contained in the March 19, 2019 Order. On the afternoon of May 29, 2020, the Respondent filed an Opposition to the State's Motion.

On May 30, 2020, the Respondent requested an emergency postponement for medical reasons. On June 1, 2020, I convened a Motions Hearing by video, at which time I granted the postponement and reset the hearing for June 5, 2020 with a second day on June 8, 2020, if necessary. I also heard arguments on both the Motion and Opposition and then rendered a bench decision granting the State's Motion in full. On the record, I fully articulated my reasons for finding that the Virginia Board's Order provides sufficient proof of the reciprocal discipline charge, and the factual findings of the Virginia Board in the Order are properly treated as conclusive proof of misconduct which the Respondent may not relitigate in this forum.

I held a video hearing on the merits on June 5, 2020. Health Occ. § 14-405(a) (Supp. 2019); COMAR 10.32.02.04D. Edward J. Leyden, Esquire, represented the Respondent, who was present. Robert Gilbert, Deputy Counsel, Health Occupations Prosecution & Litigation Division, represented the State.

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. 2019); COMAR 10.32.02; COMAR 28.02.01.

ISSUES

1. Did the Respondent's failure to disclose the Virginia Board of Medicine's (Virginia Board) investigation, complaint(s) and/or charges when applying to the Maryland Board of Physicians for renewal of his Maryland medical license in 2018 constitute, in whole or in part, a violation of the following provisions of the Health Occupations Article: section 14-404(a)(1) (fraudulently or deceptively obtains or attempts to obtain a license for the applicant or licensee or for another); section 14-404(a)(3)(ii) (guilty of unprofessional conduct in the practice of medicine); and/or section 14-404(a)(36) (willfully makes a false representation when seeking or making application for licensure or any other application related to the practice of medicine).

2. Was the Respondent in violation of section 14-404(a)(21) of the Health Occupations Article: Disciplined by a licensing/disciplinary authority (the Virginia Board) for an act or acts that would be grounds for disciplinary action under section 14-404(a), including section 14-404(a)(3)(ii) (guilty of unprofessional conduct in the practice of medicine); section 14-404(a)(19) (grossly overutilizes health care services); section 14-404(a)(22) (fails to meet appropriate standards as determined by appropriate peer review for the delivery of quality medical and surgical care performed in an outpatient surgical facility, office, hospital, or any other location in this State); and/or section 14-404(a)(33) (fails to cooperate with a lawful investigation conducted by the Board or a disciplinary panel).

3. If so, what sanctions are appropriate?

SUMMARY OF THE EVIDENCE

I admitted the following State exhibits as joint exhibits:

- Jt. Ex. 1 - Respondent's licensing information, undated
- Jt. Ex. 2 - Consent Order, dated August 18, 2003
- Jt. Ex. 3 - Consent Order, dated November 10, 2009

- Jt. Ex. 4 - Termination of Conditions of Consent Order, dated November 4, 2010
- Jt. Ex. 5 - Letter to Respondent from Virginia Board, dated April 24, 2018
- Jt. Ex. 6 - Notice of Formal Administrative Hearing and Statement of Allegations from Virginia Board, with attached Statement of Allegations, dated April 24, 2018
- Jt. Ex. 7 - Application for Renewal of Licensure, signed September 12, 2018
- Jt. Ex. 8 - Email from Federation of State Medical Boards, dated April 4, 2019, and Virginia Board Order, dated March 18, 2019
- Jt. Ex. 9 - Maryland Board of Physicians, Report of Investigation, dated August 28, 2019
- Jt. Ex. 10 - Charges under the Maryland Medical Practice Act, dated October 21, 2019

I admitted none of the Respondent's exhibits into evidence pursuant to my ruling on the State's Motion in Limine.

Testimony

The following witness testified on behalf of the Board: Matthew Dudzic, Health Policy Analyst.

The Respondent testified on his own behalf, and presented no other witnesses.

PROPOSED FINDINGS OF FACT

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

Background Information and Prior Disciplinary History

1. The Respondent was and is a physician and surgeon licensed to practice medicine in the State of Maryland. The Respondent was initially licensed as a physician in Maryland in 1982. The Respondent last renewed his license in or about September 2018, which will expire on June 30, 2020.

2. The Respondent was a physician and surgeon licensed to practice medicine in the State of Virginia. The Respondent was initially licensed as a physician in Virginia on May 1, 1995.

3. On August 18, 2003, the Respondent entered into a Consent Order with the Board wherein the Board found as a matter of law the Respondent failed to meet quality medical and surgical standards, in violation of Health Occ. § 14-404(a)(22); and failed to keep medical records in violation of Health Occ. § 14-404(a)(40). As a result of the Consent Order, the Respondent accepted a reprimand from the Board and agreed to abide by the following terms and conditions for a period of three years from the date of execution of the Consent Order:

- a. The Respondent's practice shall be subject to peer review by an appropriate peer review society or a chart review by a Board designee
- b. [T]he Respondent shall enroll in and successfully complete a Board-approved medical recordkeeping course.
- c. [T]he Respondent shall enroll in and successfully complete a Board-approved gastroenterology-based review course that covers management of reflux disease.
- d. [T]he Respondent shall obtain a Board-approved physician supervisor who is Board-certified in general surgery to supervise his practice.

e. At all times prior to performing laparoscopic Nissen fundoplication surgery, the Respondent shall obtain a consulting opinion from a gastroenterologist.

f. [T]he Respondent shall obtain a Board-approved physician who is Board-certified in general surgery to observe and review the Respondent's performance of four laparoscopic fundoplication repair surgeries

(Jt. Ex. 2).

4. On October 18, 2004, the Virginia Board reprimanded the Respondent based on the Consent Order the Respondent had entered into in Maryland.

5. On July 8, 2009, the Respondent entered into a Consent Order with the Virginia Board wherein he agreed to accept a reprimand and comply with the following terms and conditions:

a. [The Respondent] shall complete twenty hours of Board-approved continuing medical education in the subject of medical recordkeeping.

b. [The Respondent] shall review and revise, as appropriate, his office-based anesthesia Policy and Protocol. [The Respondent] shall submit a copy of the updated policy and protocol to the Board for review.

c. [The Respondent] shall submit written certification that he has read and will comply with: (i) the laws governing the practice of medicine (Title 54.1, Chapter 29 of the Code); (ii) the Regulations Governing the Practice of Medicine, Osteopathic Medicine, Podiatry, and Chiropractic (18 VAC

85-20-10 et seq.); and (iii) the Guidelines on Opioid Prescribing (Board's Guidance Document 85-24)

(Jt. Ex. 3).

6. On November 10, 2009, the Respondent entered into a Consent Order in Maryland based on the discipline rendered by the Virginia Board wherein the Respondent agreed to accept a reprimand. (*Id.*).

7. On November 4, 2010, the Board terminated the terms and conditions imposed by the 2003 Consent Order. (Jt. Ex. 4).

Facts Regarding the Virginia Discipline

8. Sometime prior to February 2015, on a date unclear in the record, the Virginia Board began an investigation into the Respondent's practice in Virginia.

9. Following the investigation, the Virginia Board held an Informal Conference on January 24, 2018; the Respondent did not participate in the Informal Conference. At the Informal Conference, the Virginia Board referred the matter for a formal hearing. (Jt. Ex. 8).

10. On April 24, 2018, the Virginia Board issued disciplinary charges against the Respondent and scheduled a hearing for June 14, 2018. (*Id.*).

11. The Respondent requested, and was granted, a continuance of both the June 14, 2018 hearing and the subsequently scheduled October 19, 2018 hearing. On December 28, 2018, the Virginia Board sent the Respondent a notice advising that the formal hearing had been rescheduled for February 15, 2019.

12. The Respondent did not attend the February 15, 2019 hearing and the Virginia Board, after determining that he had received proper notice, proceeded in his absence.

13. On March 18, 2019, the Virginia Board issued a decision finding that the Respondent had committed the following violations of the Virginia Code and the regulations governing the practice of medicine:

- a. From approximately December 2003 through January 2015, the Respondent had, contrary to sound medical judgment and/or evidence-based medical standards established by the American Cancer Society for colorectal cancer screening, repeatedly ordered unnecessary colonoscopies for four patients; and
- b. from approximately March 2004 through December 2014, the Respondent had, in the absence of adequate medical indication, ordered echocardiograms and stress tests for three patients; and
- c. in February and March 2015, the Respondent had willfully refused to provide information or records to two Virginia Department of Health Professions investigators, despite multiple requests.²

14. The Virginia Board imposed an indefinite suspension of the Respondent's license for a period of not less than twelve months from the date of the Order.

² The Virginia Board determined that, in committing the acts outlined in (a) and (b) above, the Respondent violated the following sections of the Virginia Code: section 54.1-2915(A)(1) (false statements or representations or fraud or deceit in obtaining admission to the practice, or fraud or deceit in the practice of any branch of the healing arts), (3) (intentional or negligent conduct in the practice of any branch of the healing arts that causes or is likely to cause injury to a patient or patients), (13) (conducting his practice in such a manner as to be a danger to the health and welfare of his patients or to the public), (16) (performing any act likely to deceive, defraud, or harm the public), and (18) (violating or cooperating with others in violating any of the provisions of Chapters 1 (§ 54.1-100 *et seq.*), 24 (§ 54.1-2400 *et seq.*) and this chapter or regulations of the Board), as well as the following regulation governing the practice of medicine, osteopathy, podiatry and chiropractic: 18 Va. Admin. Code § 85-20-26(C) (practitioners shall properly manage patient records and shall maintain timely, accurate, legible and complete patient records).

In addition, the Virginia Board determined that, in committing the acts outlined in (c) above, the Respondent violated the following sections of the Virginia Code: section 54.1-2915(A)(12) (conducting his practice in a manner contrary to the standards of ethics of his branch of the healing arts) and (18) (violating or cooperating with others in violating any of the provisions of Chapters 1 (§ 54.1-100 *et seq.*), 24 (§ 54.1-2400 *et seq.*) and this chapter or regulations of the Board), as well as the following regulation governing the practice of medicine, osteopathy, podiatry and chiropractic: 18 Va. Admin. Code § 85-20-105 (a practitioner shall not willfully refuse to provide information or records as requested or required by the board or its representative pursuant to an investigation or to the enforcement of a statute or regulation). (Jt. Ex. 8).

Facts Regarding the Respondent's Maryland License Application

15. On September 12, 2018, the Respondent completed and submitted his application for renewal of his Maryland medical license (Application) and submitted it to the Board. (Jt. Ex. 7).

16. On the Application, the Respondent answered "No" to all character and fitness questions, which are listed individually under Question 5, including Question 5c. Question 5c reads as follows:

Has any licensing or disciplinary board in any jurisdiction (including Maryland), a comparable body in the armed services or the Veterans Administration, filed any complaints or charges against you or investigated you for any reason? (Jt. Ex. 7).

17. Under section 19a, in the section entitled Certification and Authorization of License Application, the Respondent certified as follows:

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 any false information provided as to my application may be cause for the denial of my application. (Jt. Ex. 7).

18. The Respondent further certified, in section 19c, that:

I shall inform the Board, by electronic or first-class mail, within 30 days of: (a) action that would be grounds for disciplinary action under Md. Code Ann. Health Occ. § 14-404 that occurred at any time during the application period; (b) change in any answer that was originally given in this application. (Jt. Ex. 7).

19. On April 10, 2019, the Federation of State Medical Boards³ sent a disciplinary alert to the Board advising of the Virginia Board's Order and the suspension.

20. The Board subsequently reviewed the Respondent's answers on his September 12, 2018 license renewal application and determined that he had failed to disclose the Virginia investigation and complaint against him.

³ The Federation of State Medical Boards is a coalition of state medical boards that provides various services to the various state medical boards. One of the services provided is notification of any disciplinary action taken against a physician to those states in which the physician is licensed.

DISCUSSION

The Violations of the Health Occupations Article

Legal Framework and Burden of Proof

Under the Act, the Board is authorized to reprimand any licensee, place any licensee on probation, or suspend or revoke a license if the licensee violates any provisions of the Act. Health Occ. § 14-404(a) (Supp. 2019). In this case, the Board charged the Respondent with violating the following provisions of the Act when he failed to disclose the Virginia investigation on his 2018 Application to renew his Maryland Medical License:

(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;

(3)(ii) Is guilty of . . . [u]nprofessional conduct in the practice of medicine;
[and/or]

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

Id. § 14-404(a)(1), (3)(ii), (36).

In addition, the Board asserted that it could impose discipline on the Respondent based on the reciprocal discipline provision of the Statute, found in section 14-404(a)(21). That section provides in pertinent part that the Board may discipline a licensee who has been disciplined by a licensing or disciplinary authority “for an act that would be grounds for disciplinary action under” section 14-404. *Id.* § 14-404(a)(21). The reciprocal discipline charge arises from the Virginia Board’s Order, which indefinitely suspended the Respondent’s Virginia medical license for a period of not less than twelve months. The Board charged that the underlying grounds for

the discipline in Virginia would be grounds for disciplining the Respondent in Maryland under section 14-404(a), (3)(ii), (19), (22), and/or (33) of the Act:

(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:

(3)(ii) Is guilty of . . . [u]nprofessional conduct in the practice of medicine;

(19) Grossly overutilizes health care services;

(22) Fails to meet appropriate standards as determined by appropriate peer review for the delivery of quality medical and surgical care performed in an outpatient surgical facility, office, hospital, or any other location in this State; [and/or]

(33) Fails to cooperate with a lawful investigation conducted by the Board or a disciplinary panel

Id. § 14-404(a)(1), (3)(ii), (19), (22), (33).

When not otherwise provided by statute or regulation, the standard of proof in a contested case hearing before the OAH is a preponderance of the evidence, and the burden of proof rests on the party making an assertion or a claim. Md. Code Ann., State Gov't § 10-217 (2014); COMAR 28.02.01.21K. The State, which is prosecuting the charges for the Board, has the burden of proof by a preponderance of the evidence.

Analysis

At the outset of the hearing on the merits, the Respondent indicated that he was conceding to the allegations outlined in the State's Charges Under the Maryland Medical Practice Act (Charges). Accordingly, as the Respondent is no longer challenging the substance of the Charges, the allegations contained in the Charges are accepted as true. Based upon the parties' stipulations, I therefore find that with regard to the false representations on his 2018 Maryland medical license renewal, the Respondent fraudulently or deceptively attempted to obtain a license, was guilty of unprofessional conduct in the practice of medicine, and willfully

made false representations, in violation of sections 14-404(a)(1), (3)(ii), (36). I further find that the Respondent was disciplined by a licensing authority in Virginia for acts which would be grounds for disciplinary action under section 14-404 in violation of section 14-404(a)(21). Specifically, the acts for which the Respondent was disciplined in Virginia would be grounds for disciplinary action pursuant to sections 14-404(a)(3)(ii), (19), (22), and (33). As the parties have stipulated to the violations underlying the Charges, the only inquiry remaining is the propriety of the sanction proposed by the Board.

Sanctions

Legal Framework

In this case, the Board has stated that it seeks to impose the disciplinary sanctions of a \$5,000.00 fine for the Respondent's failure to disclose the investigation of the Virginia Board on his 2018 license renewal application and an indefinite suspension of the Respondent's license for no fewer than twelve months for the reciprocal discipline violations. Health Occ. § 14-404(a) (Supp. 2019); COMAR 10.32.02.09; COMAR 10.32.02.10. COMAR 10.32.02.09 provides the guidelines for imposing sanctions when physicians violate section 14-404(a), among others, and provides as follows:

A. General Application of Sanctioning Guidelines.

(2) Except as provided in §B of this regulation, for violations of Health Occupations Article, §§ 14-404(a), 14-504 and 1-302, Annotated Code of Maryland, the disciplinary panel shall impose a sanction not less severe than the minimum listed in the sanctioning guidelines nor more severe than the maximum listed in the sanctioning guidelines for each offense.

(3) Ranking of Sanctions.

(a) For the purposes of this regulation, the severity of sanctions is ranked as follows, from the least severe to the most severe:

(i) Reprimand;

(ii) Probation;

(iii) Suspension; and

(iv) Revocation.

(d) A fine listed in the sanctioning guidelines may be imposed in addition to but not as a substitute for a sanction.

(e) The addition of a fine does not change the ranking of the severity of the sanction.

(4) The disciplinary panel may impose more than one sanction, provided that the most severe sanction neither exceeds the maximum nor is less than the minimum sanction permitted in the chart.

(5) Any sanction may be accompanied by conditions reasonably related to the offense or to the rehabilitation of the offender. The inclusion of conditions does not change the ranking of the sanction.

(6) If a licensee has violated more than one ground for discipline as set out in the sanctioning guidelines:

(b) The disciplinary panel may impose concurrent sanctions based on other grounds violated.

Accordingly, upon a finding of a violation, although the Board is generally bound to issue a sanction, the imposition of a fine is discretionary. According to COMAR 10.32.02.10B, the range of sanctions/fines for the charges to which the parties' have stipulated are as follows:

Charge	Maximum Sanction	Minimum Sanction	Maximum Fine	Minimum Fine
(1) Fraudulently or deceptively obtains or attempts to obtain a license for the applicant or licensee or for another	Revocation	Reprimand with 2 years' probation	\$50,000	\$10,000
(3) Is guilty of . . . unprofessional conduct in the practice of medicine, consisting of: (c) Ethical violations that are not sexual in nature	Revocation	Reprimand	\$50,000	\$5,000
(19) Grossly overutilizes health care services	Revocation	Reprimand and probation for 2 years	\$50,000	\$10,000

(21) Is disciplined by a licensing or disciplinary authority or convicted or disciplined by a court of any state or country or disciplined by any branch of the United States uniformed services or the Veterans' Administration for an act that would be grounds for disciplinary action under this section	Penalty comparable to what Board imposes under equivalent Maryland ground for discipline	Penalty equivalent to that imposed by original licensing authority if this is lesser than Board sanction would be	Fine comparable to what Board imposes under equivalent Maryland ground for discipline	Fine equivalent to that imposed by original licensing authority if this is lesser than Board sanction would be
(22) Fails to meet appropriate standards as determined by appropriate peer review for the delivery of quality medical and surgical care performed in an outpatient surgical facility, office, hospital, or any other location in this State	Revocation	Reprimand	\$50,000	\$5,000
(33) Fails to cooperate with a lawful investigation conducted by the Board	Revocation	Reprimand	\$50,000	\$10,000
(36) Willfully makes a false representation when seeking or making application for licensure or any other application related to the practice of medicine	Revocation	Reprimand	\$50,000	\$10,000

The Board may increase or decrease a sanction and/or fine enumerated in the sanctioning guidelines if it determines aggravating or mitigating factors warrant a departure from the guidelines. COMAR 10.32.02.09B.

The Fine for the Failure to Disclose the Virginia Board Investigation

The State is proposing a fine of \$5,000.00 for the Respondent's failure to disclose the Virginia Board's investigation on his 2018 license renewal application. As the State explained, it is important for a licensee to be fully transparent and truthful when filling out his renewal license application because the Board does not independently investigate a licensee's answers. Rather, the Board acts as a "passive receptor" of information, relying on each licensee to provide accurate information. In this case, the Board did not learn of the Virginia Board's investigation and charges against the Respondent until it received a disciplinary alert in April 2019 advising

that the Respondent's medical license had been suspended in Virginia. The lag time between the Respondent's failure to disclose the information and the Board's learning of the action by the Virginia Board prevented the Board from promptly looking into allegations that the Respondent practiced in an ineffective and/or incompetent manner in Virginia.

The Respondent agreed that \$5,000.00 was an appropriate fine for this violation and one that he could afford, albeit maybe over time with a payment plan given the fact that his medical career has been in flux recently and his income has been severely reduced since 2015.⁴ The Respondent, who expressed remorse over his failure to disclose the Virginia investigation on his 2018 renewal application, concurred with the State that a \$5,000.00 fine is consistent with regular practice in Maryland and conceded there is a statutory basis for that amount. I therefore recommend that the Board impose a fine of \$5,000.00 on the Respondent for his failure to disclose the Virginia Board's investigation on his 2018 medical license renewal application.

The Suspension of the Respondent's Medical License

The State advocates for an indefinite suspension of the Respondent's medical license for a period of not less than twelve months. The State argues that this not only matches the discipline imposed by the Virginia Board, but also fulfills the Board's obligation to the citizens of Maryland to take some action against the Respondent's license after learning that he had been adjudged to have practiced in a substandard manner in another state. The State asserts that anything less than a suspension would be insufficient based upon the Respondent's disciplinary history.

The Respondent, while expressing an understanding of the nature of the violations he committed, urges me not to recommend that his license be suspended. The Respondent explained that he works largely with underserved populations and often will not charge for his

⁴ In 2015 the Respondent went through a contentious divorce; he lost his Virginia offices in the divorce proceedings. In 2018, the Respondent also closed his Silver Spring practice for reasons that were not specified in the record. He currently maintains only an office in Greenbelt, Maryland.

services or will offer services at a reduced rate simply to ensure that his patients have access to medical care. He is concerned with what will happen to those patients if he is not available to treat them. Further, the Respondent, who himself suffered from COVID-19 in April, has used the knowledge he gained during his illness to assist his patients who get the virus. In addition, he has signed up for the [REDACTED] to assist in the event of a spike in COVID-19 cases there.

The Respondent argues that it is "paramount" that he retain his license so that he may continue serving his patients, some of whom have nowhere else to turn for medical care. He also pointed out that there are higher rates of heart attacks and colon cancer among the populations he serves, which makes it even more vital that he be available to provide medical services to them.

The Respondent's attorney characterized as "almost saintly" the Respondent's willingness to treat those who are poor, sometimes undocumented, and cannot find medical care elsewhere and then charge either a reduced rate or provide services without charge. The Respondent stressed his belief that no one would be protected were his license to be suspended and, in fact, if the Board were to suspend his license, it would take away from the "reservoir of relief available to people" who are often treated as "pariahs" by the rest of society.

In lieu of suspending his medical license, the Respondent urges that the Board instead impose restrictions on his license that would allow him to continue to serve his patients under supervision. The Respondent's proposal is multi-pronged. First, he proposes that he address an ethics lecture to medical residents at Howard University to emphasize to them the importance of honestly and correctly answering questions on their professional applications, using his personal experience as an example of why such candor and forthrightness is so critical. He also proposes that the Board require him to take continuing medical education classes on ethics, medical record

keeping, indications for colonoscopies, recommendations for follow-up after colonoscopies, and cardiac evaluations. In addition, the Respondent also suggests that he submit to the supervision of another board-certified surgeon who would have to grant permission for the Respondent to conduct colonoscopies and who would review each of the Respondent's colonoscopies and stress echocardiograms. In an effort to be proactive, the Respondent testified that he has already arranged for another surgeon to perform the review of the colonoscopies and stress echocardiograms he performs. In addition, the Respondent is willing to have another board-certified surgeon review his overall practice.

In support of his argument that his license be spared, the Respondent points to the fact that he has completed a substantial amount of continuing medical education and belongs to several different medical societies in his effort to provide the best care possible to his patients. He also urges me to consider the fact that there have been no malpractice claims against him in the past ten years and he has caused no actual harm to any of his patients in that timeframe.

The State concedes that the Respondent has an "admirable" story of the obstacles he overcame to obtain his medical degree and in his work with underserved populations. However, the State argues that the Board has a duty to ensure its licensees maintain proper standards of care and a suspension in this case is necessary to correct the deficiencies in the Respondent's practice detected by the Virginia Board. The State maintains that if licensees are allowed to fall below the standard of care, it would undermine the public's confidence in the Board as a policing organization as well as confidence in the profession itself. The State also points to the Respondent's disciplinary history as justification for imposing a suspension in this case.

The Respondent was found to have significant deficiencies in his practice in both Maryland and Virginia in 2003 and 2009, respectively. In 2003, the Board reprimanded the Respondent and placed him under strict supervision for a period of three years due to these

deficiencies. During this time, he was required to take a medical records course, take a gastrointestinal course on the proper management of reflux disease, have a board-certified general surgeon supervise his practice, have a board-certified surgeon review his next four laparoscopic fundoplication repair surgeries, and obtain a consulting opinion from a gastroenterologist at all times before performing laparoscopic Nissen fundoplication surgery. In 2009, the Virginia Board found further deficiencies in the Respondent's medical record keeping and, in addition to issuing a reprimand, required him to take a twenty-hour continuing medical education course on medical record keeping, to review and revise his office-based anesthesia policy, and to review and certify that he would comply with the laws governing the practice of medicine in Virginia (Title 54.1, Chapter 29 of the Virginia Code), the Regulations (18 Va. Admin. Code § 85-20-10 *et seq.*), and the Guidelines on Opioid Prescribing (the Virginia Board's Guidance Document 85-24). In the view of the State, this history, and the further deficiencies detected by the Virginia Board in this most recent case, render the imposition of a suspension appropriate.

I agree with the State. The Respondent is clearly a dedicated physician who was sincere in his testimony about his desire to continue to attend to his patients, some of whom could potentially have to go without medical care if he could not treat them. However, I am not persuaded that taking additional courses and submitting to the supervision of other physicians is sufficient to address the problems. Arguably, if it were, the Respondent would have corrected his deficiencies in 2003 after the imposition of the first disciplinary action, and they would not have recurred. However, the Respondent has taken not one but two courses in medical record keeping and still had further deficiencies in that area. The Respondent received two reprimands, submitted to being supervised by other board-certified surgeons in the past for a period of three

years, was required to certify that he would comply with the applicable statutory provisions and regulations pertaining to the practice of medicine in Virginia, and still the problems with overutilization of health care services and failing to meet appropriate standards of care persisted. In light of this prior history, I believe the imposition of a suspension is appropriate. I further find that there is a statutory basis for a suspension for a period of no less than twelve months as the statute provides for a range of sanctions spanning from reprimand to revocation for the reciprocal discipline violations and specifically allows for the imposition of the same sanction imposed by the foreign licensing authority. COMAR 10.32.02.10B. For these reasons, I agree with the State that such a suspension is a "very reasonable" sanction and I recommend that the Board, in comity with the Virginia Board's action, suspend the Respondent's medical license for an indefinite period of not less than twelve months, to begin when the Board issues its final order in this matter.

PROPOSED CONCLUSIONS OF LAW

Based on the foregoing Findings of Fact and Discussion, I conclude as a matter of law that the Respondent violated the alleged provisions of the law. Md. Code Ann., Health Occ. § 14-404(a)(1), (3)(ii), (19), (21), (22), (33), and (36) (Supp. 2019). As a result, I conclude that the Respondent is subject to the disciplinary sanctions of an indefinite suspension of his medical license for a period not less than twelve months for the cited violations. *Id.*; COMAR 10.32.02.09A(2); COMAR 10.32.02.10.

I further conclude that the Respondent is subject to a fine of \$5,000.00 for the cited violations. Md. Code Ann., Health Occ. § 14-405.1(a) (2014); COMAR 10.32.02.09C(2).

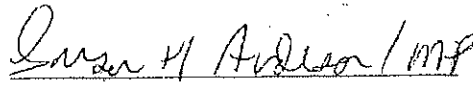
PROPOSED DISPOSITION

I PROPOSE that charges filed by the Maryland State Board of Physicians against the Respondent on October 21, 2019 be **UPHELD**; and

I PROPOSE that the Respondent be sanctioned by an indefinite suspension of his Maryland medical license for a period of not less than twelve months from the date the Board issues its final decision; and

I PROPOSE that the Respondent be ordered to pay a fine of \$5,000.00.

July 27, 2020
Date Decision Mailed


Susan H. Anderson
Administrative Law Judge

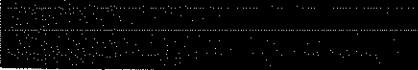
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NOTICE OF RIGHT TO FILE EXCEPTIONS

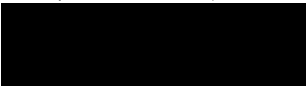
Any party adversely affected by this proposed decision may file written exceptions with the disciplinary panel of the Maryland State Board of Physicians that delegated the captioned case to the Office of Administrative Hearings (OAH), and request a hearing on the exceptions: Md. Code Ann., State Gov't § 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. The OAH is not a party to any review process.

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