

**IN THE MATTER OF
RASAQ O. ABU, M.D.**

Respondent

License Number: D43772

*** BEFORE THE
* MARYLAND STATE
* BOARD OF PHYSICIANS
* Case Number: 2219-0136A**

* * * * *

FINAL DECISION AND ORDER

On January 18, 2017, Rasaq O. Abu, M.D., license number D43772, pled guilty to the criminal charge of second-degree assault and received a Probation Before Judgment (PBJ). On July 17, 2018, Dr. Abu applied to renew his medical license but did not truthfully answer the questions regarding whether he had been arrested, entered a guilty plea, or whether he was placed on probation before judgment. On July 1, 2019, Disciplinary Panel A (“Panel A”) of the Board charged Dr. Abu under the Maryland Medical Practice Act with fraudulently or deceptively obtaining or attempting to obtain a license, in violation of § 14-404(a)(1) of the Health Occupations Article; unprofessional conduct in the practice of medicine, in violation of § 14-404(a)(3)(ii) of the Health Occupations Article; 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 § 14-404(a)(36) of the Health Occupations Article.

On November 19, 2019, pursuant to Health Occ. § 14-405(a), an evidentiary hearing was held at the Office of Administrative Hearings. Dr. Abu appeared and testified on his own behalf. On February 18, 2020, the Administrative Law Judge (“ALJ”) issued a proposed decision, concluding that Dr. Abu fraudulently or deceptively obtained or attempted to obtain a license, was guilty of unprofessional conduct in the practice of medicine, and willfully made a false representation when seeking or making application for licensure or any other application related to the practice of medicine, *see* Health Occ. § 14-404(a)(1), (3)(ii), and (36). The ALJ proposed that Dr. Abu be reprimanded and that a civil fine of \$7,500 be imposed by the disciplinary panel.

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

FINDINGS OF FACT

Board Disciplinary Panel B ("Panel B") adopts the ALJ's Proposed Findings of Fact (numbered 1-35, ALJ's Proposed Decision at pages 4-9) and Discussion (ALJ's Proposed Decision at pages 9-19), which are incorporated by reference into this Final Decision and Order as if set forth in full. The ALJ's proposed decision is attached as **Exhibit 1**. The factual findings were proven by the preponderance of evidence.

CONCLUSIONS OF LAW

Based on the undisputed findings of fact, Panel B concludes that Dr. Abu fraudulently or deceptively obtained or attempted to obtain a license, in violation of Health Occ. § 14-404(a)(1); is 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 or any other application related to the practice of medicine, in violation of Health Occ. § 14-404(a)(36).

SANCTION

The ALJ recommended that Dr. Abu be reprimanded and that he be fined \$7,500. Panel B finds that the proposed sanction is warranted and adopts it.

ORDER

It is, by an affirmative vote of a majority of a quorum of Disciplinary Panel B, hereby

ORDERED that Rasaan O. Abu, M.D. is **REPRIMANDED**; and it is further

ORDERED that within **6 MONTHS**, Dr. Abu shall pay a civil fine of **\$7,500.00**. The Payment shall be by money order or bank certified check made payable to the Maryland Board of Physicians and mailed to P.O. Box 37217, Baltimore, Maryland 21297. The Board will not

renew or reinstate Dr. Abu's license if he fails to timely pay the fine to the Board; 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 Executive Director signs the Final Decision and Order on behalf of the disciplinary panel which has imposed the terms and conditions of this Final Decision and Order; and it is further

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

05/20/2020
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, Dr. Abu has the right to seek judicial review of this Final Decision and Order. Any petition for judicial review shall be filed within 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. Abu 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 S. 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.

RASAQ OLANREWAJU ABU, M.D.,
RESPONDENT
LICENSE No.: D43772

* BEFORE JENNIFER M. CARTER JONES,
* AN ADMINISTRATIVE LAW JUDGE
* OF THE MARYLAND OFFICE
* OF ADMINISTRATIVE HEARINGS
* OAH No.: MDH-MBP2-71-19-29438
* MBP No: 2219-0136 A

* * * * *

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 July 1, 2019, the Maryland State Board of Physicians (Board) issued charges against Rasaq Olanrewaju Abu, M.D. (Respondent), for alleged 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. 2019). Specifically, the Respondent is charged with violating Health Occupations (H.O.) sections 14-404(a)(1) (fraudulently or deceptively obtaining or attempting to obtain a license), 14-404(a)(3)(ii) (unprofessional conduct in the practice of medicine), and 14-404(a)(36) (willfully making a false representation when seeking or making application for licensure or any other application related to the practice of medicine). The Board notified the Respondent it intended to impose a disciplinary sanction against him.

The disciplinary panel to which 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 a Proposed Decision.

Code of Maryland Regulations (COMAR) 10.32.02.03E(5); COMAR 10.32.02.04B(1).

I held a hearing on November 19, 2019 at the OAH in Hunt Valley, Maryland. Md. Code Ann., Health Occ. § 14-405(a) (Supp. 2019); COMAR 10.32.02.04. Janet Klein Brown, Assistant Attorney General and Administrative Prosecutor, represented the State of Maryland (State).¹ The Respondent represented himself.

Procedure in this case is governed by the contested case provisions of the Administrative Procedure Act, the Rules for Hearings Before the Board, 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 fraudulently or deceptively obtain or attempt to obtain a license to practice medicine in Maryland in violation of H.O. section 14-404 (a)(1)?
2. Did the Respondent act unprofessionally in the practice of medicine in violation of H.O. 14-404 section (a)(3)(ii)?
3. Did the Respondent willfully make a false representation when seeking or making application for licensure or any other application related to the practice of medicine in violation of H.O. section 14-404(a)(36)?
4. If so, what sanction is appropriate?

¹ Katherine Vehar-Kenyon, Assistant Attorney General, accompanied Ms. Brown at the hearing.

SUMMARY OF THE EVIDENCE

Exhibits

I admitted into evidence the following exhibits offered by the Board:

- Board #1. Charges under the Maryland Medical Practice Act, Case No. 2219-0136A, dated July 1, 2019
- Board #2. Maryland Board of Physicians Report of Investigation, dated April 17, 2019
- Board #3. Letter from the Board to the Respondent, sent by email, dated October 18, 2018
- Board #4. Letter from the Board to the Respondent, dated October 18, 2018, sent by postal mail
- Board #5. Email from the Board to the Respondent, dated October 31, 2018
- Board #6. Letter from the Board to the Respondent, dated November 1, 2018, sent by email
- Board #7. Letter from the Board to the Respondent, dated November 1, 2018, sent by postal mail
- Board #8. Letter from the Board to the Respondent, dated November 1, 2018, sent by postal mail on December 10, 2018
- Board #9. Letter from the Board to the Respondent, dated December 10, 2018
- Board #10. Email from the Respondent to the Board dated December 17, 2018, with attached letter from the Respondent, dated December 17, 2018
- Board #11. Email from the Board to the Respondent, dated December 18, 2018
- Board #12. Email from the Respondent to the Board, dated December 24, 2018, with attachments
- Board #13. Letter from the Maryland Department of Health to the Clerk of the Court, District Court for Howard County, dated July 2, 2019
- Board #14. Letter from Maryland Department of Health to the Clerk of the Court, District Court for Howard County, dated July 2, 2019, with attachments
- Board #15. Transcript from the District Court of Maryland for Howard County; *State v. [Respondent]*, dated January 18, 2017

- Board #16. Respondent's Application for Renewal of License, dated July 17, 2018
- Board #17. American Medical Association Physician Profile for the Respondent, checked on December 7, 2018
- Board #18. Respondent's certifications from the American Board of Medical Specialties with an expiration date of September 30, 2020
- Board #19. Board Practitioner Profile for the Respondent with an expiration date of September 30, 2020
- Board #20. Board Physician Profile Portal for the Respondent with a license expiration date of September 30, 2020

I admitted into evidence the following exhibits offered by the Respondent:

- Resp. #1 Board Notice to Renew Your License by September 30, 2018, undated
- Resp. #2 Letter from the Board to the Respondent, dated April 5, 2010

Testimony

The Board presented the testimony of Matthew Dudzic, Board Compliance Analyst Associate. The Respondent testified.

PROPOSED FINDINGS OF FACT

The Parties stipulate that the Respondent was not convicted of any crime. I find the following facts by a preponderance of the evidence:

1. Physicians licensed in the State of Maryland must renew their licenses to practice medicine in the State every two years. They may renew their licenses online.
2. Effective October 1, 2016, Maryland physicians are required to submit to a criminal history records check (CHRC) when they apply for or renew a license.
3. At all relevant times, the Respondent, was licensed to practice medicine in the State of Maryland. The Respondent was originally licensed to practice medicine in Maryland on October 1, 1992.

4. On October 3, 2016, the Respondent was arrested and charged with second degree assault, after a domestic incident involving the Respondent and his wife. The Respondent reportedly punched his wife in her mouth with a closed fist.
5. At a January 18, 2017 trial, the Respondent pled guilty to the second-degree assault charge; the District Court of Maryland for Howard County (District Court) accepted the guilty plea, ordered the Respondent to pay \$257.50 in criminal fines and costs, and issued a disposition of Probation Before Judgment (PBJ).
6. The Respondent was also ordered to have no contact with his wife except regarding their children and to complete an anger management class.
7. On July 17, 2018, the Respondent applied (application) to renew his Maryland Physician's License (the license).
8. On the application, the Respondent reported his address was on [REDACTED] in Cooksville, Maryland (the [REDACTED] address).
9. Question five on the application pertains to character and fitness and it has numerous sub questions. It provides the following instructions: "Check the box YES or NO next to each question. *If you answer Yes, provide an explanation at the prompt.*" (Board #16) (emphasis in the original)
10. If the applicant selects "yes," for any sub question under question five, a text box appears on the screen where the applicant may further explain the circumstances of her/his affirmative answer.
11. Question 5g asks "Have you pleaded guilty or nolo contendere to any criminal charge or have you been convicted of a crime or placed on probation before judgment because of a criminal charge?"
12. The Respondent answered "No" to question 5g. (Board #16)

13. Question 18a on the Application states as follows: "I affirm 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, information, and belief. I understand that providing any false, misleading, or incomplete information may result in disciplinary action by the [Board]."
14. Question 18d asks applicants to verify that they have completed a CHRC.
15. The Respondent completed the CHRC.
16. As a result of the CHRC, the Board received information regarding the Respondent's October 3, 2016 second-degree assault charge. The Board refers to this information as a "reportable event." (T. Dudzic; Board #3)
17. On October 18, 2018, Mr. Dudzic, on behalf of the Board, sent the Respondent a letter at the [REDACTED] address requesting "[c]opies of any relevant charges, pleas, convictions or other dispositions and any applicable documentation showing completion of term of sentence" and an explanation regarding the dates and "circumstances surrounding any incident(s)." (Board #3)
18. The October 18, 2018 letter advised that the Respondent had ten days to respond and noted that a failure to provide the requested information could result in disciplinary action.
19. On October 29, 2018, the United States Postal Service (USPS) returned the October 18, 2018 letter to the Board with the notation that the letter was undeliverable as addressed and that the USPS was unable to forward it to another address for the Respondent.
20. On October 31, 2018, Mr. Dudzic sent the October 18, 2018 letter to the Respondent by email at the email address the Respondent provided on his application.

21. On November 1, 2018, Mr. Dudzic sent a follow-up letter to the Respondent at the Oakdale address advising that the Board had not received the information requested in its October 18, 2018 letter. The letter further advised the Respondent he had five business days from November 1, 2018 letter to submit the requested information.
22. On November 15, 2018, the USPS returned the November 1, 2018 letter to the Board with the notation that the letter was undeliverable as addressed and that the USPS was unable to forward it to another address for the Respondent.
23. Between November 15, 2018 and December 10, 2018, Mr. Dudzic called the Respondent at the phone number provided on the Application and spoke with him.
24. The Respondent advised Mr. Dudzic that he no longer resides at the [REDACTED] Road address and provided Mr. Dudzic with a post office (P.O.) box in Lisbon, Md. (the Lisbon address).
25. On December 10, 2018, Mr. Dudzic sent the Respondent a copy of the November 1, 2018 letter at the Lisbon address. On that same date, Mr. Dudzic sent a letter to the Clerk of the Court for the District Court and requested the following documents related to the Respondent's October 3, 2016 second-degree assault charge:
 - Docket Entry Sheets
 - Indictment, Information, or other Formal Statement of Charges
 - Court Clerk's Worksheets
 - Judgments and Sentencing
 - Probation Orders
 - Case Histories
 - Verdict Form and/or Stipulated Statements of Facts/Statement of Facts on the Record
 - Plea Agreements
 - Written Opinion of the Trial Judge
26. On December 17, 2018, the Respondent sent Mr. Dudzic an email confirming receipt of the November 1, 2018 letter. The Respondent advised Mr. Dudzic he did not receive the

October 18, 2018 letter requesting information related to his criminal background check. The Respondent requested that Mr. Dudzic resend the October 18, 2018 letter by postal mail or email.

27. On December 18, 2018, Mr. Dudzic sent the Respondent an email with an attached copy of the October 18, 2018 letter.
28. By email dated December 24, 2018, the Respondent replied to Mr. Dudzic's December 18, 2018 email with an attached explanation of the domestic incident in September 2016 that led to his arrest and charge for second-degree assault. The Respondent explained the Judge who presided over his case offered him a PBJ, ordered him to pay a fine, and ordered that he complete an anger management class, which he did.
29. The Respondent attached to the December 24, 2018 email a December 6, 2016 Summons; the Defendant Trial Summary; a Probation/Supervision Summary; a receipt for fines paid; a [REDACTED] Treatment Referral; and, two letters from [REDACTED], advising the Judge who presided over the Respondent's assault case of the Respondent's enrollment in and completion of the Abuse Intervention Program.
30. Before January 2, 2019, the District Court advised Mr. Dudzic that he was required to resubmit his request for court documents related to the Respondent's assault case, which Mr. Dudzic did on January 2, 2019.
31. On or about January 10, 2019, the Board received documents from the District Court regarding the Respondent's assault case, including a Statement of Probable Cause, a Statement of Charges, a Trial Summary, a Defendant Probation/Supervision Summary, a Probation/Supervision Docket, and a Case Summary.

32. After receiving the documents from the District Court, Mr. Dudzic requested and received a transcript of the Respondent's January 18, 2017 assault trial.
33. Mr. Dudzic created a report, detailing the underlying second-degree assault incident, charge, and disposition; the Respondent's answer to question 5g on his July 2018 Application; and the steps Mr. Dudzic had taken to investigate the Respondent's second-degree assault charge.
34. On July 1, 2019, the Board issued Charges against the Respondent under the Medical Practice Act and notified the Respondent that a Disciplinary Committee for Case Resolution (DCCR) proceeding had been scheduled for September 11, 2019.
35. When the DCCR was unsuccessful, the Board referred the matter to OAH for a hearing.

DISCUSSION

Legal Framework

Under the Maryland Medical Practice Act, the Board is authorized to reprimand any licensee, place any licensee on probation, or suspend or revoke a license if the licensee is guilty of unprofessional conduct in the practice of medicine. H.O. §§14-404(a)(3) (ii). Additionally, the Board may discipline a licensee upon a determination that a licensee made a false representation when seeking or making application for licensure or any other application related to the practice of medicine, §14-404(a)(36), or upon a determination that a licensee fraudulently or deceptively attempted to obtain a license H.O. § 14-404 (a)(1).

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. 2019); *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).

The Parties' Positions

The Board argues that the Respondent intentionally answered no to question 5g in an attempt to hide and conceal his second-degree assault charge and plea and the PBJ issued by the District Court. In support of its position, the Board presented the testimony of Board Compliance Analyst Associate Matthew Dudzic, who testified that he opened an investigation into the Respondent's criminal history after he learned of the second-degree assault charge from the Respondent's CHRC. Mr. Dudzic further explained that because the Respondent answered "no" to question 5g on the Application, on October 18, 2018 and November 1, 2018, he sent to the Respondent at his address of record with the Board letters requesting more information and documents relating to his assault charge. When those letters were returned by the USPS as undeliverable, he contacted the Respondent by email and by telephone and sent copies of the Board's October 18 and November 1 letters to the Lisbon address. Mr. Dudzic also requested documents related to the Respondent's assault matter from the District Court. Ultimately, Mr. Dudzic did not receive documentation from the Respondent regarding his assault matter until December 24, 2018, over five months after the Respondent had submitted his Application.

The Board argues that the Respondent's behavior in failing to report his assault charge, plea, and PBJ on the Application was a willful misrepresentation; deceptive and fraudulent; and constituted unprofessional conduct in the practice of medicine.

The Respondent asserts that he answered "no" to question 5g because in addition to asking whether he had plead guilty to a crime, that question also asked if he had plead "nolo contendere" to a crime, the latter of which he did not do. Furthermore, explained the Respondent, in addition to asking whether he was placed on probation before judgment, question 5g asks if he has ever been convicted because of a criminal charge. As he had not been convicted and because

he did not plead nolo contendere, the Respondent testified that he believed the appropriate action was to answer in the negative.

The Respondent further testified that he assumed that once the Board received the results of his CHRC, it would learn that he pleaded guilty to second-degree assault and was placed on probation before judgment. Then, the Respondent explained, he surmised that the Board would investigate the discrepancy between his answer to 5g and his CHRC results and contact him so he could provide a full explanation of the circumstances related to the incident.

Analysis

At the outset, I must note that the Respondent repeatedly testified that Ms. Brown, as the Administrative Prosecutor, should not have pursued prosecution of the Board's charges. It became clear during the hearing that the Respondent was confused about Ms. Brown's role in relation to the Board's charges. In any event, whether Ms. Brown made any decisions regarding moving forward with the hearing pursuant to the Board's charges is not an issue before me. The only issues are whether the Respondent acted fraudulently and deceptively in an attempt to obtain a renewed Maryland License when he intentionally answered 5g incorrectly, and whether his failure to answer correctly constituted the unprofessional practice of medicine.

Unprofessional Conduct in the Practice of Medicine

It is clear, and there is no dispute that "the practice of medicine" includes the making of false disclosures to the Board on a license application. *Kim v. Md. State Bd. of Physicians*, 196 Md. App. 362, 378-379 (2010), aff'd 423 Md. 523 (2011). In *Kim*, after reviewing the Maryland courts' historical reasoning regarding what actions fall within the ambit of the practice of medicine, the Court of Special Appeals determined that making "a false application or submitting false testimony for a Board proceeding are clearly within the practice of medicine." *Id.* at 376 (quoting *Cornfeld v. State Board of Physicians*, 174 Md. App. 456, 893 (2007)).

Noting that the Board's mission is "to regulate the use of physicians' licenses in Maryland in order to protect and preserve the public health," the *Kim* court ultimately determined that false statements made to the Board on an application for renewal "interferes with the Board's obligation to investigate the proper delivery of patient care, and its obligation to protect the public health and adequately regulate the medical profession." *Id.* Thus, such false statements are inextricably linked with the practice of medicine.

Question 5g is quite clear. The question appears in finding of fact 11, but it bears repeating here. It asks, "Have you pleaded guilty or nolo contendere to any criminal charge or have you been convicted of a crime or placed on probation before judgment because of a criminal charge?" (Board #16) The Respondent does not dispute that he answered "no" to that question. There is also no dispute that the Respondent pleaded guilty to the 2016 assault charge, and he received a disposition of PBJ for that charge. Although the Respondent asserted that he believed his answer was correct because he had not been convicted of the assault charge, I find the Respondent's position untenable. The question is written in the disjunctive -- meaning that each of the options (pleading guilty; pleading nolo contendere; conviction of a crime; *or* placement on probation before judgment) are distinct and separate options. The only plausible interpretation of question 5g is that if he can answer affirmatively to any of the four possible options, the correct answer is "yes."

Accordingly, I conclude that the Respondent made a false disclosure on his Application and for reasons amply set forth in *Kim*, I also conclude that this false disclosure constituted the unprofessional practice of medicine.

False Representation When Making an Application for a License.

In addition to determining that answering falsely on a renewal application constitutes the practice of medicine, in *Kim*, the Court of Special Appeals considered what constitutes "willfulness," as it pertains to the answers physicians give on their applications/reapplications for

licensure. Rejecting the position that willfulness requires the applicant's knowledge of his false answer and intent to deceive, the *Kim* court determined that willfulness does not require a specific intent to deceive. Relying on the decision by the Court of Appeals in *Deibler v. State*,² the *Kim* court held that reporting a false answer is willful if it is made intentionally, without accident or inadvertence or ordinary negligence.

In *Deibler*, the Court of Appeals engaged in a lengthy analysis of when an action is deemed willful or intentional for the purpose of Maryland wiretapping and electronic surveillance law. Much of the Court's discussion of the definitions of "willful" and "intentional" involved whether those terms required knowledge of the criminal nature of recording oral communication without permission. Ultimately, the Court determined that such knowledge was not a prerequisite to a finding of a willful act. Rather a willful action is one that is "done intentionally-purposely. That excludes interceptions arising from inadvertence or simple negligence, which may occur in a variety of ways." The *Deibler* Court did not elaborate circumstances or examples of the simple negligence or inadvertence it referenced in its exceptions to willful action.

Similar to the statutes the court discussed in *Deibler*, Title 10, Subtitle 4 of the H.O. Article offers no definition of the terms "willful" or "intentional." When construing an undefined statutory term, the term should be given "the contextual meaning most probably intended by the Legislature." *Chen v. State*, 370 Md. 99, 111 (2002) (citing *Deibler*, 365 Md. at 195). The H.O. Article is concerned with health care and related providers, the prerequisites for licensure, the prohibitions of actions related to licensure, and the penalties applicable to violations. Indeed, section 1-102 of the H.O. Article clearly states that "[i]t is the policy of the State that health

² 365 Md. 185 (2000).

occupations should be regulated and controlled as provided in this article *to protect the health, safety, and welfare of the public.*" (emphasis added).

There is no question that the Respondent intended to answer "no" to question 5g. Indeed, the Respondent's argument focused on the reason he answered "no" to 5g, not that his answer was unintentional. I conclude that by falsely answering "no" to question 5g, the Respondent prevented the Board from gaining an accurate snapshot of his criminal history between the Respondent's application in July 2018 and the Board's receipt, in December 2018 of court and related documents regarding the Respondent's assault charge. Thus, during that time, the Board could not ensure, with confidence, that the Respondent did not pose a threat to Maryland patients. Accordingly, the Respondent is subject to sanction under H.O. § 14-404 (A)(36).

Fraudulently or deceptively attempts to obtain a license.

I also conclude the Respondent acted fraudulently and deceptively when attempting to obtain a license. Unlike a false representation on an application, which requires only the Respondent's willfulness to answer in the manner he did on the renewal application, the State must prove the Respondent *intended* to deceive the Board to obtain his renewal license. That is, he must have expected to receive his license as a result of his false answers on the application. *Elliott v. Md. State Bd. of Physicians*, 170 Md. App. 369 (2016).

In *Elliott*, the Court of Special Appeals determined the physician did act to deceive the Board for the purposes of obtaining a license because when completing his application for licensure, the physician failed to report repeated complaints, investigations and malpractice claims. The Court concluded the physician's failure to report these claims "provid[ed] compelling evidence of his intent to induce the board, to its detriment, to reinstate [his] license." *Elliott*, 170 Md. App. at 419-20; see also *Kim*, 196 Md. App. at 379-80 (differentiating the willful action requirement required for a violation of a section 14-404(a)(36) false representation charge from the deceptive intent to obtain

a license necessary for a violation of a 14-404(a)(1) charge). For reasons stated below, I conclude that the Respondent acted with fraudulent intent when he answered "no" to question 5g.

I do not find the Respondent's argument credible that he answered "no" to question 5g because he wished the Board to launch an investigation and give him an opportunity to fully explain the circumstances surrounding his involvement in the 2016 assault. As I have stated, a simple reading of the question can lead only to the conclusion that the Respondent was required to answer "yes" and report if he had pleaded guilty OR pleaded nolo contendere OR was convicted Or received a PBJ. Furthermore, the introduction to the question 5 character and fitness question states the following: "Check the box YES or NO next to each question. *If you answer Yes, provide an explanation at the prompt.*" (Board #16) (emphasis in the original). A simple reading of this language makes it patent that if the Respondent had answered "yes" to question 5g, he could have provided an explanation about the assault matter on the actual application. The Respondent's position that he chose to forego the opportunity to explain about the 2016 assault matter on the application and to opt to wait for a Board investigation into the matter is wholly illogical. Furthermore, despite his position that he wished to provide an explanation to the Board about the assault incident and charge, the Respondent conceded that he did not independently attempt to reach the Board by phone, email, or postal mail after filing his July 2018 application to offer that explanation.

Moreover, the Respondent offered no credible evidence that he would have had reason to know that the Board would commence an investigation and question him to resolve the conflict between his answer to question 5g and the results of the CHRC. Indeed, when asked how he could have known the Board would launch an investigation, the Respondent admitted the question was a good one. He then visibly and audibly hesitated for a few seconds before testifying, unconvincingly, that he was once investigated by the Board when a patient made a

false accusation about him. The Respondent did not produce any evidence, however, regarding this alleged investigation and in any event, if the Board did contact him in the past about a patient complaint, he failed to explain how that inquiry would merit the conclusion that the Board would launch an investigation into his answer to 5g on the application.

Furthermore, in every other aspect of the presentation of his case, the Respondent had been strident in his answers and in his presentation of his case. I find the Respondent's hesitant and unconvincing testimony about how he knew the Board would investigate his answer to 5g coupled with his illogical position that he intended to spark an investigation by his answer to 5g renders his testimony not credible. The introduction to the character and fitness questions are clear that answering yes to a question will allow the applicant to provide an explanation. Accordingly, if the Respondent's intent in answering "no" to question 5g was to have an opportunity to explain the circumstances surrounding the second-degree assault, he could have easily done so on the application.

For all of these reasons, I give little weight to the Respondent's argument and find that the preponderance of the evidence merits the conclusion that the Respondent's misrepresentation on his application was an attempt to conceal the assault matter from the Board. Accordingly, the Respondent is subject to sanction under H.O. § 14-404(A)(1).

Sanction

The Board seeks to impose the disciplinary sanction of a reprimand and assess the Respondent a \$7,500.00 fine. HO § 14-404(a) (Supp. 2019). COMAR 10.32.02.09 provides the guidelines for imposing sanctions when physicians violate HO 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 Article §§14-404(a), 14-504 and 1-302, Annotated Code of Maryland, the Board 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 Board 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 Board 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 10.32.02.10, the range of sanctions/fines for the charges I find the Board has proven 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) Immoral or unprofessional conduct in the practice of medicine, consisting of: ... (c) Ethical violations that are not sexual in nature	Revocation	Reprimand	\$50,000	\$5,000
(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

Based upon the sanctioning guidelines, the Board could have recommended revocation of the Respondent's license as well as a *minimum* fine of \$25,000.00 for the three violations of HO section 10-404, COMAR 10.32.02.10. 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 Board considered that the Respondent does not have any prior disciplinary record and reduced the minimum sanction from a reprimand with two years' probation to a simple reprimand. The Board also took into consideration that the Respondent's medical career has been in flux recently and reduced the minimum fine from \$25,000.00 to \$7,500.00. The Board argued that this was an appropriate sanction due to the deceptive and fraudulent actions of the Respondent.

The Respondent maintained that he did not intend to mislead the Board, but simply answered question 5g in the negative because he wished to have an opportunity to explain the circumstances of his 2016 assault charge, guilty plea, and PBJ disposition. He also argued that he has never been disciplined by the Board before and is not charged with sexual assault or a more egregious violation of H.O. section 14-404(a). Accordingly, the Respondent requested that I propose that the Board issue no sanction or fine.

I have already determined that the Respondent violated the sections of H.O. as charged by the Board. I also conclude that the sanction sought by the board is appropriate. In so concluding, I echo the Court of Appeals' reasoning in *Kim*, that the Board is charged with adequately regulating the medical profession and to protect and preserve the public health. By answering "no" to question 5g, the Respondent precluded the Board for a time from carrying out their mission to ensure that the Respondent did not pose a threat to the welfare or safety of his patients. Furthermore, he caused the Board to incur the time and expense of investigating the conflict between his answer to 5g and the results of his CHRC. While, ultimately, the Board did not determine that the Respondent's assault charge merited a suspension or revocation of his license, from July 2018 until December 2018, when the Board received the District Court documents related the Respondent's 2016 assault charge, plea, and PBJ, it could not be certain of that fact. The Respondent had ample opportunity to apprise the board of the circumstances surrounding the 2016 assault. He could have answered 5g correctly with an explanation or he could have called, emailed or sent a letter to the Board explaining the assault. He took none of those actions, and I have concluded that he failed to apprise the Board of the assault in an effort to conceal it. For these reasons, I conclude the reprimand and \$7,500.00 fine are appropriate

PROPOSED CONCLUSIONS OF LAW

Based on the Findings of Fact and Discussion, I conclude as a matter of law that the Respondent engaged in unprofessional conduct in the practice of medicine in violation of Health Occupations section 14-404(a)(3)(ii); willfully made a false representation when seeking or making application for licensure or any other application related to the practice of medicine in violation of Health Occupations section 14-404(a)(36); and fraudulently or deceptively obtained or attempted to obtain a license in violation of Health Occupations section 14-404(a)(1).

I further conclude that a reprimand and the imposition of a \$7,500.00 fine represent a reasonable exercise of discipline by the Board. COMAR 10.32.02.09; COMAR 10.32.02.10.

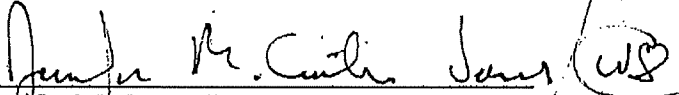
PROPOSED DISPOSITION

I **PROPOSE** that the Maryland State Board of Physicians' charges that Respondent Rasaan Olanrewaju Abu, M.D., License No. D43772; violated sections 14-404(a)(1), 14-404(a)(3)(ii), and 14-404(a)(36) of the Health Occupations Article be **UPHELD**;

I further **PROPOSE** that the Respondent be **REPRIMANDED**;

I further **PROPOSE** that the Respondent be ordered to pay a fine of \$7,500.00.

February 18, 2020
Date Order Mailed


Jennifer M. Carter Jones
Administrative Law Judge

JCI/emh
#184658

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.

Copies Mailed To:

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