

IN THE MATTER OF	*	BEFORE THE
DAVID MORTON SILVERSTEIN, M.D.	*	MARYLAND STATE
Respondent	*	BOARD OF PHYSICIANS
License Number: D44821	*	Case Number: 2218-0181A
* * * * *	*	* * * * *

FINAL ORDER OF REVOCATION OF MEDICAL LICENSE

On **November 16, 2018** Disciplinary Panel A (“Panel A”) of the Maryland State Board of Physicians (the “Board”) notified **DAVID MORTON SILVERSTEIN, M.D.** (the “Respondent”), **License Number D44821**, of its **INTENT TO REVOKE** the Respondent’s license to practice medicine in the State of Maryland. The Notice informed the Respondent that unless the Respondent requested a hearing in writing within 30 days of the date of mailing of the Notice, Panel A intended to sign this Final Order, which was enclosed. More than 30 days have elapsed, and the Respondent failed to request a hearing. Therefore, Panel A hereby revokes the Respondent’s license to practice medicine.

The basis for Panel A’s action was pursuant to the Maryland Medical Practice Act (the “Act”), Md. Code Ann., Health Occ. (“Health Occ.”) §§ 14-401 *et seq.* (2014 Repl. Vol. and 2017 Supp.), and COMAR 10.32.02.14(A).

The pertinent provisions of the Act provide:

Health Occ. § 14-404. Denials, reprimands, probations, suspensions, and revocations –Grounds.

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

- (1) Fraudulently or deceptively obtains or attempts to obtain a license for the applicant or licensee or for another;
- ...
- (2) Is guilty of:
 - ...
 - (ii) Unprofessional conduct in the practice of medicine;
 - ...
- (33) Fails to cooperate with a lawful investigation conducted by the Board or a disciplinary panel;
- ...
- (36) Willfully makes a false representation when seeking or making application for licensure or any other application related to the practice of medicine;
- ...
- (42) Fails to submit to a criminal history records check under § 14-308.1 of this title[.]

Health Occ. § 14-308.1. Criminal history records check through Central Repository.

- (a) In this section, "Central Repository" means the Criminal Justice Information System Central Repository of the Department of Public Safety and Correctional Services.
- (b) An applicant, a licensee, or a certificate holder shall apply to the Central Repository for a State and national criminal history records check.
- (c) As part of the application required under subsection (b) of this section, an individual shall submit to the Central Repository:
 - (1) Two complete sets of legible fingerprints taken on forms approved by the Director of the Central Repository and the Director of the Federal Bureau of Investigation;

- (2) The fee authorized under § 10-221(b)(7) of the Criminal Procedure Article for access to State criminal history records; and
- (3) The mandatory processing fee required by the Federal Bureau of Investigation for a national criminal history records check.

The pertinent provisions of the Board's regulations under COMAR 10.32.02 provide:

.14 Proposed Orders; . . .

- A. Nothing in this chapter prohibits the issuance of a charging document with a proposed order which will go into effect if the respondent fails to request a hearing.

INVESTIGATIVE FINDINGS

Panel A finds the following:

1. At all times relevant, the Respondent was and is licensed to practice medicine in the State of Maryland. The Respondent was initially licensed on July 3, 1993, under license number D44821. The Respondent's license is presently active and expires on September 30, 2019.
2. On or about September 26, 2017, the Respondent submitted an online application (the "application") for license renewal using the Board's online license renewal application process.
3. When a licensee applies online to renew their license, a notice appears that informs the licensee that the Board may not renew a license if it has not received the licensee's Criminal History Record Check ("CHRC") information. This requires

the licensee's submission of their fingerprints to Criminal Justice Information Services ("CJIS") before attempting to complete the renewal application.

4. The Respondent then continued with the application by clicking the button which reads "Yes, I acknowledge that I have submitted my fingerprints to CJIS BEFORE attempting to complete my renewal application." This dialog box provides that if the applicant has not already submitted their fingerprints, they should exit the application process until this requirement is satisfied.

5. The Respondent did not exit the application, but instead continued and completed it indicating that he had submitted his fingerprints for CHRC. The application was electronically signed by the Respondent and dated September 26, 2017. The Respondent's signed application states, "Failure to submit to a criminal history record check may result in disciplinary action."

6. On or about January 16, 2018, the Board sent a letter to the Respondent indicating that it had not received a response to previous communications¹, and that a preliminary investigation had been opened based upon the Respondent's failure to obtain a CHRC. The Respondent did not respond.

7. The Board's investigation determined that the Respondent failed to submit fingerprints to CJIS in compliance with the CHRC process, as set forth in Health

¹ In addition to a letter sent via USPS, the Board attempts to make email contact with all licensees for whom the Board has not received CHRC results.

Occ. § 14-308.1, and misrepresented to the Board in the application that the Respondent had met these requirements.

8. The Respondent's actions including failure to complete the CHRC, as outlined in pertinent part above constitute, in whole or in part, a violation of Health Occ. § 14-404(a)(42), failing to submit to a criminal records history check under § 14-308.1 of this title.

9. The Respondent's misrepresentation to the Board on the application that the Respondent completed the CHRC, and failure to cooperate with the Board's investigation, as outlined in pertinent part above, constitute, in whole or in part, a violation of one or more of the following provisions of the Act: Health Occ. § 14-404(a)(1), Fraudulently or deceptively obtaining or attempting to obtain a license for the applicant, licensee, or for another; Health Occ. § 14-404(a)(3)(ii), Is guilty of: (ii) Unprofessional conduct in the practice of medicine; Health Occ. § 14-404(a)(33), Fails to cooperate with a lawful investigation conducted by the Board or a disciplinary panel; and Health Occ. § 14-404(a)(36), Willfully makes or files a false report or record in the practice of medicine.

CONCLUSIONS OF LAW

Based on the foregoing Findings of Fact, Panel A concludes as a matter of law that the Respondent violated Health Occ. §§ 14-404(a) (1), (3ii), (33), (36) and (42).

ORDER

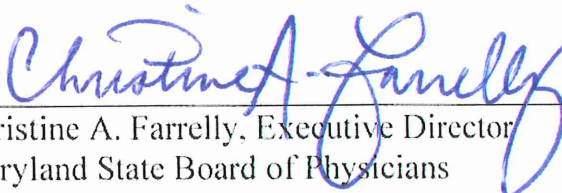
It is, on the affirmative vote of a majority of the quorum of Panel A, hereby:

ORDERED that the license of **DAVID MORTON SILVERSTEIN, M.D.**, is **REVOKED**; and it is further

ORDERED that the Respondent may apply for reinstatement of the Respondent's license to practice medicine after a minimum of one (1) year from the date of this Order; and it is further

ORDERED that this is a **PUBLIC DOCUMENT** pursuant to Md. Code Ann., Gen. Prov. §§ 4-101 *et seq.* (2014 & 2017 Supp.).

01/02/2019
Date


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

NOTICE OF RIGHT TO PETITION FOR JUDICIAL REVIEW

Pursuant to Health Occ. § 14-408, the Respondent 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 the Respondent files a petition for judicial review, the Board is a party and should be served with the court's process at the following address:

Christine A. Farrelly, Executive Director
Maryland State Board of Physicians
4201 Patterson Avenue, 4th Floor
Baltimore, Maryland 21215

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

Noreen M. Rubin, Assistant Attorney General
Maryland Office of the Attorney General
Maryland Department of Health
300 West Preston Street, Suite 302
Baltimore, Maryland 21201