

IN THE MATTER OF

*

BEFORE THE

DORIANN R. THOMAS, M.D.

*

MARYLAND STATE

Respondent

*

BOARD OF PHYSICIANS

License Number: D44895

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Case Number: 2221-0133

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FINAL DECISION AND ORDER

BACKGROUND

On May 3, 2022, Disciplinary Panel A of the Maryland State Board of Physicians (“Board”) charged Doriann R. Thomas, M.D., with unprofessional conduct in the practice of medicine and failure to cooperate with a lawful investigation conducted by the Board or a disciplinary panel. *See* Md. Code Ann., Health Occ. § 14-404(a)(3)(ii), (33). The charges concerned Dr. Thomas’s repeated failure to respond to two Board subpoenas.

The case was forwarded to the Office of Administrative Hearings (“OAH”) for an evidentiary hearing and a proposed decision. On July 6, 2023, the ALJ issued a Ruling on Joint Motion for Summary Disposition and adopted the joint request for summary disposition submitted by the parties on June 13, 2023, as the ALJ’s proposed decision in the matter. The proposed decision concluded that Dr. Thomas failed to cooperate with the Board’s investigation, in violation of Health Occ. § 14-404(a)(33). The ALJ proposed that the unprofessional conduct in the practice of medicine charge, Health Occ. § 14-404(a)(3)(ii), be dismissed. The ALJ proposed a sanction of a reprimand, \$5,000 fine to be paid within six months, and that Dr. Thomas comply in full with the Board’s investigation within 120 days to avoid the suspension of her license.

Neither party filed exceptions to the ALJ’s proposed decision. On August 23, 2023, this matter came before Disciplinary Panel B (“Panel B”) of the Board. Panel B has considered the

record in this case, including the proposed decision of the ALJ, and now issues this order based on Panel B's findings of fact and conclusions of law. *See* COMAR 10.32.02.05B(4).

FINDINGS OF FACT

Panel B adopts the ALJ's proposed findings of fact 1 - 7. These facts were undisputed before the ALJ and neither party filed exceptions to any of the factual findings and the factual findings were proved by a preponderance of the evidence. The undisputed findings of fact are as follows:

1. At all relevant times, the Respondent was and is licensed to practice medicine in the State of Maryland. The Respondent initially was licensed to practice medicine in Maryland on July 27, 1993, under License Number D44895. The Respondent's license is current until September 30, 2023.

2. The Respondent is board-certified in Diagnostic Radiology.

3. At all relevant times, the Respondent was and is the Owner of [REDACTED], [REDACTED] located in Prince George's County, Maryland. [REDACTED] provides radiology services, including mammograms.

4. On May 26, 2021, the Board opened an investigation based on a May 20, 2021 United States Food and Drug Administration (the "FDA") Alert. (Exhibit 2). The May 20, 2021 FDA Alert advised patients of [REDACTED] and referring health care providers of potential problems with the quality of mammograms performed at [REDACTED] from June 26, 2018 to March 25, 2021.

5. On August 5, 2021, the Board issued a subpoena to the Respondent to produce a complete list of mammograms performed at [REDACTED] from June 26, 2018 to the present. (Exhibit 3). In her written response, the Respondent noted that she "will defer sending the patient

information to the State” as she and [REDACTED] are in the appeal process with the FDA. (Exhibit 4).

6. On August 26, 2021 (Exhibit 5) and September 27, 2021 (Exhibit 6), the Board reissued its August 5, 2021 subpoena to the Respondent. The Board did not receive a response to either of the subpoenas.

7. On November 15, 2021, the Board subpoenaed the Respondent to appear at the Board’s office on November 29, 2021, to provide the documents requested in the August 5, 2021 subpoena. (Exhibit 7). Board staff was contacted by the CFO/COO of [REDACTED] that the Respondent would not be able to appear because she was attending an out-of-town conference. (Exhibit 8). In addition, Board staff was informed that neither the Respondent nor [REDACTED] will provide a response to the subpoena. (Exhibit 8). Board staff followed up with the CFO/COO via email, requesting the Respondent, who was copied on the email, to provide documentation of the conference. (Exhibit 8). The Respondent also was provided the opportunity to provide Board staff the subpoenaed documents in lieu of her appearance. (Exhibit 8). The Respondent did not respond to the Board staff’s email.

DISCUSSION

Pursuant to COMAR 10.32.02.05B(4), if the parties do not file exceptions, the disciplinary panel shall consider the record, including the proposed decision of the administrative law judge, and issue its order based on the disciplinary panel’s findings of fact and conclusions of law. The Panel is not bound by the proposed decision of the ALJ. *See State Bd. of Physicians v. Bernstein*, 167 Md. App. 714, 721 (2006). Rather, the Panel has the authority to adopt, reverse, or modify the ALJ’s proposed findings of fact and conclusions of law based on the Panel’s evaluation of the proposed decision and the record in this case.

The Panel, after reviewing the ALJ's proposed decision and the record in this case, determined that the undisputed proposed findings of fact were supported by a preponderance of the evidence and adopted the proposed findings of fact. The Panel now considers the conclusions of law.

Failure to cooperate

It is undisputed that Dr. Thomas failed to comply with either subpoena issued by the Board in connection with its investigation. The Board, through its subpoenas sought a complete list of mammograms performed at [REDACTED] from June 26, 2018 to the present. Dr. Thomas responded that she would "defer sending the patient information" because she and [REDACTED] [REDACTED] were in the appeal process with the FDA. Dr. Thomas has not complied with the Board's subpoenas and has not produced the complete list of mammograms. If Dr. Thomas had an objection to the Board's subpoenas, the "exclusive judicial remedy was to file, in the Circuit Court . . . a motion to quash the subpoena or a motion for a protective order." *Maryland State Bd. of Physicians v. Eist*, 417 Md. 545, 568 (2011). Dr. Thomas did not file a motion to quash or a motion for protective order to challenge the Board's subpoena and did not advance any legal argument as to why she could not comply with the Board's subpoena while her appeal with the FDA was pending. Accordingly, the Panel agrees with the ALJ and the parties that Dr. Thomas failed to cooperate with a lawful investigation of the Board or disciplinary panel, in violation of Health Occ. § 14-404(a)(33).

Unprofessional Conduct in the Practice of Medicine

The ALJ in this case dismissed the charge of unprofessional conduct in the practice of medicine based on the agreement of the parties and did not undertake any independent analysis or

consideration of whether Dr. Thomas's willful failure to cooperate for over two years in this case was unprofessional.

Unprofessional conduct refers to "conduct which breaches the rules or ethical code of a profession, or conduct which is unbecoming a member in good standing of a profession." *Finucan v. Maryland Bd. of Physician Quality Assur.*, 380 Md. 577, 593 (2004). The meaning "is determined by the common judgment of the profession as found by the professional licensing board." *Id.* (Internal quotation marks omitted).

Dr. Thomas has repeatedly failed to comply with the Board's subpoenas for over two years without a valid legal excuse. Dr. Thomas's intentional refusal to comply with the Board's subpoenas in defiance of the law is unbecoming of a member in good standing of the profession. Moreover, the Panel relies on the compliance of its licensees in a compulsory process, such as obeying a subpoena, in order to be able to conduct its investigations and achieve its mission of protecting the public. The Panel finds that Dr. Thomas's repeated intentional refusal to comply with the Board's investigation for over two years, without legal excuse, constitutes unprofessional conduct in the practice of medicine.

CONCLUSIONS OF LAW

Based on the undisputed facts and the undisputed violation that Dr. Thomas failed to cooperate with a lawful Board investigation, the Panel finds that Dr. Thomas violated Health Occ. § 14-404(a)(33). The Panel also concludes, based on the undisputed facts, that Dr. Thomas is guilty of unprofessional conduct in the practice of medicine, in violation of Health Occ. § 14-404(a)(3)(ii).

SANCTION

Compliance with Board subpoenas is paramount to the Board being able to conduct investigations and fulfill its mission to protect the public. The Board has been unable to investigate the underlying allegations concerning the quality of mammogram images for over two years because of Dr. Thomas's failure to provide the complete list of mammograms performed. The Board's inability to investigate due to Dr. Thomas's failure to cooperate puts the public at severe risk.

The ALJ proposed a sanction of a reprimand, \$5,000 fine within six months, and that Dr. Thomas comply in full with the Board's investigation within 120 days to avoid the suspension of her license. The Panel agrees with the ALJ that a reprimand and a fine are appropriate and believes that a suspension is warranted if Dr. Thomas does not comply with the outstanding Board subpoenas. The Panel, however, believes that a higher fine is warranted as a result of Dr. Thomas's intentional and willful conduct and as a deterrent for other physicians who may similarly attempt to thwart the Board's investigation by failing to comply with the Board's subpoena. The Panel also believes that granting Dr. Thomas an additional 120 days from the date of this Order is far too long of a time period for her compliance given the inordinate amount of time that has already passed since the issuance of the subpoena and the issuance of charges. In light of the time that has already passed and Dr. Thomas's agreement submitted by the parties to the ALJ on June 13, 2023, to comply with the Board's subpoena or risk suspension, the Panel believes that 5 business days is more than sufficient for Dr. Thomas to compile and produce the list of mammograms requested by the Board.

ORDER

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

ORDERED that Doriann R. Thomas, M.D., is **REPRIMANDED**; and it is further

ORDERED that **within FIVE (5) business days** of the date of this Order, Dr. Thomas shall comply in full with the Board's August 5, 2021 subpoena. If Dr. Thomas fails to comply, Dr. Thomas's medical license in Maryland shall be automatically suspended from the 6th business day and will remain suspended until she is in full compliance with the Board's investigation. If the suspension is imposed, upon Dr. Thomas's compliance, in full, with the Board's investigation, the suspension shall be administratively terminated through an order from the disciplinary panel; and it is further

ORDERED that **within FIFTEEN (15) calendar days** of the date of this Order, Dr. Thomas shall pay a civil fine of \$10,000.00. The Payment shall be by money order or bank certified check made payable to the Maryland Board of Physicians and mailed to P.O. Box 37217, Baltimore, Maryland 21297. The Board will not renew or reinstate Dr. Thomas's license if Dr. Thomas fails to timely pay the fine to the Board; and it is further

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

Signature On File

09/08/2023
Date

Christine A. Farrelly, Executive Director
Maryland Board of Physicians

NOTICE OF RIGHT TO PETITION FOR JUDICIAL REVIEW

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

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

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

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