

IN THE MATTER OF

*

BEFORE THE

ASIT PATEL, M.D.

*

MARYLAND STATE

Respondent

*

BOARD OF PHYSICIANS

License Number: D56805

*

Case Number: 2218-0187A

* * * * *

FINAL DECISION AND ORDER

PROCEDURAL HISTORY

Asit Patel, M.D., is an anesthesiologist, originally licensed to practice medicine in Maryland in 2000. Dr. Patel resides and practices medicine in Delaware. On August 13, 2018, Disciplinary Panel A of the Maryland State Board of Physicians (“Board”) charged Dr. Patel with fraudulently or deceptively obtaining or attempting to obtain a license, unprofessional conduct in the practice of medicine, failing to cooperate with a lawful investigation conducted by the Board or disciplinary panel, willfully making a false representation when seeking or making an application for licensure, and failing to submit to a criminal history records check. *See* Md. Code Ann., Health Occ. § 14-404(a)(1), (3)(ii), (33), (36), (42). The charges alleged that Dr. Patel failed to submit to a criminal history records check (“CHRC”), deceptively misstated on his application that he had completed the CHRC, and failed to cooperate by failing to respond in the Board’s investigation.

On March 8, 2019, an Administrative Law Judge (“ALJ”) held an evidentiary hearing at the Office of Administrative Hearings. At that hearing, the State presented the testimony of Ian Andrews, a Board compliance analyst. Dr. Patel testified on his own behalf. On June 6, 2019, the ALJ issued a proposed decision recommending that the Board uphold the charges that Dr. Patel was guilty of unprofessional conduct in the practice of medicine, failed to cooperate with a

lawful investigation conducted by the Board or disciplinary panel, willfully made a false representation when seeking or making an application for licensure, and failed to submit to a criminal history records check. *See* Health Occ. § 14-404(a)(3)(ii), (33), (36), (42). The ALJ recommended dismissing the ground that Dr. Patel fraudulently or deceptively obtained a license. Health Occ. § 14-404(a)(1). The ALJ recommended that Dr. Patel be reprimanded, take a course in medical ethics, and pay a \$10,000 fine. Dr. Patel filed written exceptions on June 17, 2019, and the State filed a written exception on June 24, 2019 and a response to Dr. Patel's exceptions on July 9, 2019. On August 28, 2019, Disciplinary Panel B held an oral exceptions hearing.

FINDINGS OF FACT

Disciplinary Panel B ("Panel B") of the Board adopts the ALJ's Proposed Findings of Fact and, except as expressly stated in this decision, the Discussion section.¹ The ALJ's Proposed Findings of Fact ¶¶ 1-36 and the Discussion (pages 8-15, 17-19) 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 and are summarized below.

Dr. Patel has been licensed to practice medicine in Maryland since 2000. Under Health Occ. § 14-308.1, Dr. Patel was required to obtain a CHRC as part of his 2017 Maryland license renewal. On Dr. Patel's renewal application, he attested that he had submitted his fingerprints for a CHRC. He also checked that he had completed the CHRC on a pop-up box notice, which explained that he was attesting that he had submitted his fingerprints before attempting to complete his renewal application, and that a failure to submit to the CHRC could result in

¹ Panel B does not adopt the ALJ's discussion on Dr. Patel's intent to deceive titled "*fraud or deception to obtain a license*" (ALJ's Proposed Decision at 15-17). Panel B also does not adopt the Sanction section (ALJ's Proposed Decision at 19-22).

disciplinary action. The Board made numerous attempts to contact Dr. Patel to investigate whether he had complied with the CHRC requirement, but Dr. Patel did not respond to the Board's communications.

EXCEPTIONS

Dr. Patel and the State each filed exceptions to the ALJ's proposed decision. Dr. Patel's exceptions challenged the ALJ's proposed conclusions of law that he was guilty of unprofessional conduct in the practice of medicine, failed to cooperate with a lawful investigation conducted by the Board or disciplinary panel, willfully made a false representation when seeking or making an application for licensure, and failed to submit to a criminal history records check. *See* Health Occ. § 14-404(a)(3)(ii), (33), (36), (42). The State filed an exception to the ALJ's proposed conclusion of law that Dr. Patel did not fraudulently or deceptively obtain or attempt to obtain a license. *See* Health Occ. § 14-404(a)(1).

I. Unprofessional conduct in the practice of medicine, Health Occ. § 14-404(a)(3)(ii)

The ALJ found that Dr. Patel was guilty of unprofessional conduct in the practice of medicine by failing to obtain a criminal history records check. The ALJ noted that in *Cornfeld v. State Bd. of Physicians*, 174 Md. App. 456, 479 (2007), the Board found that Dr. Cornfeld was guilty of unprofessional conduct in the practice of medicine when he made false statements to hospital peer reviewers and Board investigators related to the settings for a machine he had used during surgery. *Id.* at 479. The ALJ explained that the Court of Appeals expanded on the *Cornfeld* interpretation of unprofessional conduct in the practice of medicine in *Kim v. Maryland State Bd. of Physicians*, 423 Md. 523, 543 (2011), where the Court upheld a finding unprofessional conduct for a physician who misstated his malpractice history on his application.

Kim, at, 543 (2011). The Court of Appeals found that the Board did not err in finding that “filing a license renewal application is sufficiently intertwined with patient care” to constitute the practice of medicine and stated that “Board must be able to rely on the accuracy of information conveyed in license applications.” *Id.* at 542.

Dr. Patel argues that because his actions involved no patient care, no ill will was intended, and because he did not have a criminal history, his behavior could not be considered “sufficiently intertwined with patient care to pose a threat to patients or to the medical profession.” ALJ Proposed Decision at 12 (quoting *Cornfeld*, 174 Md. App. at 474).

Panel B adopts the analysis set forth by the ALJ. The Court in *Kim* explained that providing “false information could form the basis upon which the Board renews or grants a license,” and is, therefore, in the practice of medicine. *Kim*, 423 Md. at 542. In *Kim*, the Board may not have renewed Dr. Kim’s license had he responded honestly on the renewal application. Here, the Board application could not be completed without those affirmations, and, therefore, Dr. Patel’s license would not have been able to be renewed had he responded honestly. Making false statements on a Board license renewal application is both unprofessional conduct and in the practice of medicine. Dr. Patel’s exception is denied.

II. Failing to cooperate with a lawful investigation conducted by the Board or disciplinary panel, Health Occ. § 14-404(a)(33)

The ALJ found that Dr. Patel failed to cooperate with the Board’s investigation when he failed to respond to multiple attempts by the Board to contact him regarding his CHRC. The ALJ also found that the Board began its investigation when it originally contacted Dr. Patel to ascertain why it had not yet received the results of his CHRC. The ALJ determined that Dr. Patel had received the Board’s communications but either ignored or chose not to open them. The ALJ explained that it was his responsibility to open and read the email and mail

communications from the Board, and, by not doing so, Dr. Patel failed to cooperate in the Board's investigation. Thus, the ALJ concluded that, whether intentional or not, Dr. Patel failed to cooperate, in violation of Health Occ. § 14-404(a)(33).

Dr. Patel argues that he cooperated with the Board's investigation, had no ulterior motive for not cooperating with the Board because he has no criminal history, and that he responded to emails, phone calls and hearing notices. He rationalized his failure to respond to Board communications sent by mail by asserting that he did not think they related to him because he did not believe that he had a Maryland license. He also said he was very busy in his solo practice. He also claimed that he called the Board after November 2018 but was unable to reach Board staff because of office closures, call waiting, and messages that were not returned.

Panel B adopts the ALJ's analysis and conclusion. As the ALJ explained, Dr. Patel's suggestion that he did not realize that the correspondences concerned him does not excuse his failure to respond to letters and emails from the Board. His responses to the Board after charges were issued, do not excuse his failure to respond and cooperate during the Board's investigation. As a licensee, Dr. Patel has a responsibility to open and respond to investigatory correspondence from the Board. Panel B agrees with the ALJ that Dr. Patel either opened and ignored the Board's communications or chose not to open them. Neither choice excuses Dr. Patel's failure to respond to the Board's investigation. Dr. Patel's exception is denied.

III. Failing to submit to a criminal history records check. Health Occ. § 14-404(a)(42)

The ALJ found that, although Dr. Patel ultimately complied with the CHRC requirement, for a year and a half, he failed to do so, in violation of Health Occ. § 14-404(a)(42). Dr. Patel

argues that he eventually submitted his fingerprints for the CHRC, and that he has no criminal history.

Dr. Patel's ultimate completion of the CHRC does not excuse his failing to comply with the requirement to obtain a CHRC prior to being licensed. At the time Dr. Patel was charged, and even after this case had been referred to OAH for a hearing, Dr. Patel had not completed the CHRC because he claimed to be too busy with his solo practice. Only after the OAH scheduling conference, on January 19, 2019, did Dr. Patel finally submit his fingerprints for the CHRC. The Board did not receive the results of the CHRC until February 22, 2019, over 17 months after he submitted his application attesting that he had already submitted to a criminal history check. This untimely completion of the CHRC is a violation of Health Occ. § 14-404(a)(42). Dr. Patel's exception is denied.

IV. Willfully making a false representation when seeking or making an application for licensure, Health Occ. § 14-404(a)(36) and fraudulently or deceptively obtain or attempt to obtain a license, Health Occ. § 14-404(a)(1)²

The ALJ found that Dr. Patel willfully made a false representation while seeking a license, but that he did not fraudulently or deceptively obtain a license. The ALJ found that the renewal application was clear in requiring Dr. Patel to attest that he *already* had obtained a CHRC. Dr. Patel paid the renewal fee and his license was emailed to him. However, the ALJ accepted Dr. Patel's assertion that he did not realize that his license would be renewed if he had not completed the CHRC, and was not aware that he was sent his license via email. The ALJ noted that willfulness does not require an "intent to deceive" under *Kim*, 423 Md. at 546, but that intentional acts are considered willful. The ALJ explained that to demonstrate deception, Dr. Patel "must have expected to receive his license as a result of his false answers on the

² While these are two separate disciplinary grounds, both concern the same factual issues and will be discussed together.

application.” ALJ Proposed Decision at 16 (quoting *Elliott v. Maryland State Bd. of Physicians*, 170 Md. App. 369 (2006)). As such, the ALJ concluded that Dr. Patel acted willfully in filling out the application with false information. However, the ALJ did not find that Dr. Patel intended to deceive the Board, and instead concluded that Dr. Patel believed that he would not be eligible to retain his Maryland license until he completed his CHRC requirement. The ALJ based this conclusion on two emails that Dr. Patel sent to the Administrative Prosecutor that suggested that Dr. Patel was unaware that his license was renewed.

In his exceptions, Dr. Patel argues that while he incorrectly stated that he had submitted fingerprints for the CHRC, it was without “ill intesion [sic].” He claims that if he had left the application incomplete and waited until he got fingerprinted, he might have forgotten to complete his application. He explains that he simply forgot why he had fingerprinting cards on his desk. In sum, he argues that while he knew that he had not completed the fingerprinting when he attested that he had done so, he had meant to later complete the CHRC, but then he got busy and never completed it. Thus, he argues his misrepresentation on his application should not be considered willful.

In the State’s exception, the State argues that the ALJ erred in finding that Dr. Patel did not act fraudulently or deceptively in obtaining a license. The State argues that the Board went to great lengths to inform licensees about the CHRC requirement, notifying licensees in its newsletter and posting detailed instructions on the Board’s website. The State also argues that the language in the “pop-up” box on the application itself clearly notifies applicants that by completing the application they are attesting that they had already completed the CHRC. Additionally, in Question 29-D, applicants must certify that they have submitted fingerprints for a CHRC. Because Dr. Patel checked those boxes, knowing that he had not submitted

fingerprints for the CHRC, the State argues that his excuse that he did not realize his license would be renewed is unsupported and contradicted by the statements he made on the application by attesting that he had already obtained a CHRC.

Panel B finds that Dr. Patel both willfully filed a false report and deceptively obtained a license. Like in *Elliott*, Dr. Patel's actions were deliberately false and deceptive, and he was, therefore, guilty of "willfully fil[ing] a false report" and "deceptively obtaining a license." *Elliott*, 170 Md. App. at 420. At the time he completed his application, Dr. Patel knew his application contained false information, but he submitted the application anyway in order to deceive the Board, and with the intent that his license be renewed so that his license would not lapse. Because Dr. Patel knew that he submitted an application with false information that the Board relied on in renewing his license, his actions constitute deceptively obtaining a license.

The ALJ's focus on whether Dr. Patel realized that his license had been renewed after filing out the renewal application is misplaced. Dr. Patel's answers on his application attesting to *already* completing his criminal history check, while knowing that he had not done so, were willful, false, and deliberately deceptive. Dr. Patel's intention to rectify the deception by later obtaining his CHRC does not excuse the intentional misrepresentation on his renewal application at the time he submitted the application. The disciplinary ground is not limited to *attempting* to obtain a license, rather the ground also explicitly includes deceptively *obtaining* a license. Dr. Patel, undisputedly obtained a license, and he did so by intentionally submitting his renewal which contained false and deceptive statements. Panel B, therefore, finds that Dr. Patel willfully made a false representation when making an application for licensure and deceptively obtained a license. The State's exception is granted, and Dr. Patel's exception is denied.

CONCLUSIONS OF LAW

Disciplinary Panel B concludes, as a matter of law, that Dr. Patel is guilty of: deceptively obtaining a license, Health Occ. § 14-404(a)(1); unprofessional conduct in the practice of medicine, Health Occ. § 14-404(a)(3)(ii); failing to cooperate with a lawful investigation conducted by the Board, Health Occ. § 14-404(a)(33); willfully making or filing a false report or record in the practice of medicine, Health Occ. § 14-404(a)(36); and failing to submit to a Criminal History Records Check, Health Occ. § 14-404(a)(42).

SANCTION

As a sanction, the ALJ recommended reprimanding Dr. Patel, requiring him to take an ethics course, and imposing a \$10,000 fine. The State argues that Panel B should adopt the ALJ's recommended sanction. Dr. Patel argues that he should not be fined or reprimanded, but agreed to take an ethics course. Panel B adopts the ALJ's proposed sanction, but will impose a fine of \$7,500 instead of \$10,000.

ORDER

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

ORDERED that Asit Patel, M.D. is **REPRIMANDED**; and it is further

ORDERED that Dr. Patel is placed on **PROBATION** until he complies with the following probationary condition:

Dr. Patel shall take and successfully complete a Board-approved course in ethics.

The following terms apply:

- (a) it is Dr. Patel's responsibility to locate, enroll in and obtain the disciplinary panel's approval of the course before the course is begun;
- (b) the disciplinary panel will not accept a course taken over the internet;

- (c) Dr. Patel must provide documentation to the disciplinary panel that Dr. Patel has successfully completed the course;
- (d) the course may not be used to fulfill the continuing medical education credits required for license renewal;
- (e) Dr. Patel is responsible for the cost of the course; and it is further

ORDERED that Dr. Patel's probation will be administratively terminated through an order of the disciplinary panel after Dr. Patel provides documentation to the Panel that he has successfully completed the ethics course; and it is further

ORDERED that within one year, Dr. Patel shall pay a civil fine of \$7,500. 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. Patel's license if Dr. Patel fails to timely pay the fine to the Board; and it is further

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

ORDERED that, if Dr. Patel allegedly fails to comply with any term or condition imposed by this Final Decision and Order, Dr. Patel shall be given notice and an opportunity for a hearing. If Disciplinary Panel B 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. If Disciplinary Panel B determines there is no genuine dispute as to a material fact, Dr. Patel shall be given a show cause hearing before Disciplinary Panel B; and it is further

ORDERED that after the appropriate hearing, if the disciplinary panel determines that Dr. Patel has failed to comply with any term or condition imposed by this Final Decision and Order, the disciplinary panel may reprimand Dr. Patel, place Dr. Patel on probation with

appropriate terms and conditions, or suspend with appropriate terms and conditions, or revoke Dr. Patel'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. Patel; 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 Disciplinary Panel B; 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).

10/15/2019

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. Patel 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. Patel 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
Maryland Department of Health
300 West Preston Street, Suite 302
Baltimore, Maryland 21201**

Exhibit 1

MARYLAND

BOARD OF PHYSICIANS

v.

ASIT PATEL, M.D.,

RESPONDENT

LICENSE No. D56805

* BEFORE JENNIFER M. CARTER JONES,

* AN ADMINISTRATIVE LAW JUDGE

* OF THE MARYLAND OFFICE

* OF ADMINISTRATIVE HEARINGS

* OAH CASE No.: MDH-MBP2-71-19-00485

* MBP CASE No.: 2018-0575A

* * * * *

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 August 13, 2018, the Maryland Board of Physicians (Board or MBP) issued charges against Asit Patel, 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. 2018).¹ Specifically, the Respondent is charged with violating HO §§ 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), 14-404(a)(33) (failing to cooperate with a lawful investigation conducted by the Board or disciplinary panel), 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), and 14-404(a)(42) (failing to submit to a criminal

¹ Sections of the Health Occupations Article of the Maryland Code will hereafter be referred to as "HO § ____." All reference to the HO article are to the 2014 volume and the 2018 supplement.

history records check). The Board notified the Respondent it intended to revoke his license to practice medicine in the State of Maryland as a result of these charges.

On December 11, 2018, the Respondent requested a hearing on the Board's charges and intended revocation of his license. On that same date, the Board delegated the matter to the Office of Administrative Hearings (OAH) for a hearing on the charges. The Board further delegated to the OAH the authority to issue Proposed Findings of Fact, Proposed Conclusion(s) of Law, and a Proposed Disposition.

On March 8, 2019, I conducted a hearing at the OAH in Hunt Valley, Maryland. HO § 14-405(a) (2014). Dawn Rubin, Assistant Attorney General, Health Occupations Prosecution and Litigation Division, represented the State. The Respondent represented himself. Code of Maryland Regulations (COMAR) 28.02.01.20C.

Procedure in this case is governed by the contested case provisions of the Administrative Procedure Act, the Rules of Procedure for the Board, and the Rules of Procedure of the OAH. Md. Code Ann., State Gov't II §§ 10-201 through 10-226 (2014 and Supp. 2018); COMAR 10.32.02; COMAR 28.02.01.

ISSUES

1. Did the Respondent fraudulently or deceptively obtain or attempt to obtain a license in violation of HO § 14-404(a)(1)?
2. Did the Respondent engage in unprofessional conduct in the practice of medicine in violation of HO § 14-404(a)(3)(ii)?
3. Did the Respondent fail to cooperate with a lawful investigation conducted by the Board or disciplinary panel in violation of HO § 14-404(a)(33)?

4. 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 HO § 14-404(a)(36)?
5. Did the Respondent fail to submit to a criminal history records check in violation of HO § 14-404(a)(42)?
6. What, if any, is the appropriate sanction?

SUMMARY OF THE EVIDENCE

Exhibits

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

- State Ex. 1: Notice of Intent to Revoke Medical License, August 13, 2018, with attached proposed Final Order of Revocation of Medical License, undated
- State Ex. 2: Letter from the Maryland Department of Health and Mental Hygiene² to the Appellant, November 27, 2000, and Application for Initial Medical Licensure, October 28, 2000
- State Ex. 3: The Respondent's renewal application, August 8, 2017
- State Ex. 4: Printout of Criminal History Background Check notification from an MBP online renewal application
- State Ex. 5: Not offered
- State Ex. 6: Letter from MBH Intake Manager Maureen Sammons to the Respondent, January 16, 2018
- State Ex. 7: Emails between the Respondent, Christine Farrelly of the MBP and Dawn Rubin, August 24, 2018
- State Ex. 8: Emails between Ms. Rubin and the Respondent, November 2, 2018
- State Ex. 9: Instructions for Applying for Criminal History Records Check, undated
- State Ex. 10: Not offered
- State Ex. 11: Email from the MBP to the Respondent, October 30, 2017

² Now called the Maryland Department of Health.

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

- Resp. Ex. 1: Letter from the Respondent addressed to "To whom it may concern," January 30, 2019
- Resp. Ex. 2: Receipt/Verification from the Delaware State Bureau of Identification, January 18, 2019; Application for Criminal History Record Check, January 15, 2019; Copy of a check for \$30.00 from the Respondent to Criminal Justice Information System, January 19, 2019
- Resp. Ex. 3: The Respondent's statement in response to the State's intent to revoke his medical license, February 8, 2019
- Resp. Ex. 4: Letter from the Respondent to Ms. Rubin, February 23, 2019
- Resp. Ex. 5: Letter from the Respondent to Ms. Rubin, February 27, 2019 Statement
- Resp. Ex. 6: Maryland Department of Public Safety and Correctional Services Criminal History Record Check for the Respondent, February 22, 2019

Testimony

The State presented the testimony of Ian Andrews, MBP Compliance Analyst. The Respondent testified in his own behalf.

PROPOSED FINDINGS OF FACT

I find the following facts by a preponderance of the evidence:

1. At all relevant times, the Respondent, an anesthesiologist, was licensed to practice medicine in the State of Maryland. The Respondent was originally licensed to practice medicine in Maryland on November 27, 2000.
2. The Respondent currently resides in Delaware.
3. In 2015, the Maryland Legislature passed a law, effective October 1, 2016, requiring physicians to submit to a criminal history records check (CHRC). That law is codified at section 14-308.1 of the Health Occupations Article.

4. The MBP sends all of its licensees a newsletter. In the fall 2016 edition of the newsletter, the MBP informed all of its licensees of the law requiring CHRCs for each licensee.
5. Regarding licensure renewal applications, the MBP uses an "honor system" and assumes physicians have complied with CHRC requirement when they: 1) affirm they have completed the CHRC process; 2) submit the renewal application; and, 3) submit the renewal application fee. Accordingly, physicians remain licensed while the MBP awaits the results of the CHRC.
6. The MBP website contains step-by-step directions regarding the process for obtaining a CHRC for physicians who reside in Maryland and for those who reside outside of Maryland. The instructions have been on the MBP website since October 1, 2016.
7. Physicians are able to obtain a CHRC by being fingerprinted at a local police or other designated facility. The fingerprints are sent to the Criminal Justice Information System (CJIS) and CJIS forwards the criminal history to the MBP.
8. On August 8, 2017, the Appellant submitted a license renewal application. He also paid the license renewal fee of \$512.00.
9. Question 29-D of the renewal application states the following:

The Board may not renew a license if the criminal history record check information has not been received. By completing this renewal, you are attesting that you have completed your CHRC. Failure to submit to a criminal history check is a violation of §14-404(a)(42) [of the Health Occupations Article] and may result in disciplinary action.
10. The Respondent answered 29-D affirmatively, stating that he had completed his CHRC.
11. Before an applicant is able to complete an online application for licensure or a renewal application, a window pops up on the computer screen. The window includes an image of a stop sign and the following statement:

Pursuant to Health Occupations, the Board may not renew a license if the [CHRC] information has not been received. By completing this renewal, you are attesting that you have completed your [CHRC]. Failure to submit to a criminal history check is a violation of the Medical Practice Act and may result in disciplinary action.

State Ex. 4.

12. The pop-up CHRC reminder window also includes a check box, next to which is written the following: "Yes, I acknowledge that I have submitted my fingerprints to CJIS BEFORE attempting to complete my renewal application." State Ex. 4.
13. The Respondent checked the box acknowledging he had submitted his fingerprints to CJIS before attempting to complete his renewal application.
14. The Respondent had not submitted his fingerprints to CJIS when he completed and submitted his renewal application on August 8, 2017.
15. Upon completing his August 8, 2017 application, the Respondent's license remained active even though the MBP had not received the CHRC. The MBP notified the Respondent his license remained active and sent him a copy of his license via email.
16. On October 30, 2017, when the MBP had not received the results from a CHRC for the Respondent, the MBP sent an email to the Respondent at the email address he provided on his renewal application, advising him it had not received the CHRC results.
17. The October 30, 2017 email advised the Respondent he could be subject to disciplinary action if the MBP did not receive the CHRC results within ten days of the email.
18. The MBP received a confirmation its October 30, 2017 email was delivered to the Respondent's email address.
19. The Respondent did not respond to the MBP's October 30, 2017 email or submit his fingerprints to complete the CHRC.

20. On January 16, 2018, Maureen Sammons, MBP Intake Manager, sent the Respondent a letter to his address of record with the Board advising him it had not received any response from him to the Board's October 30, 2017 email, and it had not received the CHRC results. The MBP gave the Respondent ten days from the date of the letter to submit documentation showing he had obtained his CHRC.
21. The MBP's January 16, 2018 letter was not returned to the MBP by the United States Postal Service as undeliverable.
22. The Respondent did not provide documentation to the Board showing he had obtained his CHRC and he did not respond to the Board's January 16, 2018 letter.
23. On August 13, 2018, the Board sent the Respondent a Notice of Intent to Revoke Medical License (Revocation Notice). The Revocation Notice advised the Respondent he could request a hearing before an MBP Disciplinary Committee for Case Resolution (DCCR) panel within thirty days of the Revocation Notice date.
24. A DCCR proceeding allows a physician to meet with members of the MBP to present information explaining why s/he has failed to comply with some policy, regulation or statute related to licensure.
25. On August 24, 2018, the Respondent sent an email to Christine Farrelly, Executive Director of the Board, and advised he did not realize the seriousness of his failure to complete the CHRC. The Respondent further stated he had considered not following through on continued licensure in Maryland and because his Delaware practice had become so busy, he did not have time to complete the CHRC.
26. The Board scheduled a DCCR proceeding for the Respondent for December 5, 2018.
27. On November 2, 2018, Ms. Rubin sent an email to the Respondent and asked him if he had completed the CHRC. On that same date, the Respondent replied to Ms. Rubin,

advising her he had not had an opportunity to get the CHRC completed and he asked Ms. Rubin to send him the documents he needed to get the CHRC done.

28. In his email, the Respondent asked Ms. Rubin if his Maryland license renewal application process would proceed if he completed the CHRC. He also pointed out he had already paid the renewal application fee.

29. Also on November 2, 2018, Ms. Rubin advised the Respondent by email he could contact Ian Andrews, Board Compliance Analyst, for assistance and she provided the Respondent with Mr. Andrews' phone number.

30. The Respondent did not contact Mr. Andrews.

31. On December 5, 2018, the MBP convened a DCCR proceeding. The Respondent participated in the DCCR proceeding by telephone.

32. On January 18, 2019, the Respondent went to the Delaware State Police and provided fingerprints so a CHRC could be conducted.

33. The Board received the Respondent's CHRC on February 22, 2019. [REDACTED]

[REDACTED]

34. The Respondent's Maryland License has remained active even though he did not timely submit his CHRC.

35. If a physician's Maryland license is active, it is reflected as such on the MBP website.

36. To obtain a copy of a Maryland renewed license, a physician must print it from the MBP website.

DISCUSSION

Legal Framework

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, HO §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, HO §14-404(a)(36), or upon a determination that a licensee fraudulently or deceptively obtained or attempted to obtain a license, HO §14-404(a)(1). A licensee may also be subject to sanction under HO § 14-404 (a) (33) if the Board determines that a licensee failed to cooperate with a lawful investigation conducted by the Board or disciplinary panel in violation of HO § 14-404(a)(33), and under § 14-404(a)(42) if the Board determines that the Respondent failed to submit to a CHRC. For the reasons set forth below, I conclude the State has satisfied its burden with respect to four of the five charges under HO § 14-404.

Arguments of the Parties

The State argues the charges should be sustained because despite being amply advised during the license renewal process that he was required to submit to a CHRC, the Respondent failed to do so. The State also asserts that despite his failure to submit to a CHRC, the Respondent reported on his renewal application that he had done so. According to the State, after the Respondent's submission of his renewal application, the Board made multiple attempts to advise the Respondent that he failed to submit his CHRC and remind him he was required to do so under Maryland law. These attempts included an October 30, 2017 email sent to the Respondent's email address of record,³ a January 16, 2018 letter sent to the Respondent's address of record,⁴ and an August 13, 2018 Revocation Notice. It was only after the Respondent received the Revocation Notice that he reached out to the Board to inquire how to become compliant with the CHRC requirement. After the Board scheduled a DCCR at the Respondent's request, on November 2, 2018, Ms. Rubin emailed the Respondent to inquire whether he had

³ The Board received a confirmation that the email was successfully delivered to the Respondent's email address.

⁴ The Respondent agreed the address to which the Board sent its correspondence in Delaware was his mailing address.

submitted his fingerprints for the CHRC, to which the Respondent requested that Ms. Rubin send him the documents necessary for him to complete the CHRC. Ms. Rubin referred the Respondent to Ian Andrews for details on how to complete the CHRC; however, the Respondent did not submit his fingerprints for the CHRC. In fact, the Respondent did not submit his fingerprints until January 18, 2019, over a month after the DCCR.⁵ The Board asserts it did not receive the results of the CHRC until February 22, 2019, over seventeen months after the Respondent submitted his August 8, 2017 renewal application.

In support of its position, the State offered the testimony of MBP Compliance Analyst Ian Andrews, who verified the Board's attempts to contact the Respondent and have him comply with the CHRC requirement. The State also submitted documentation corroborating those attempts. Mr. Andrews testified that when an applicant submits a renewal application, the MBP automatically renews the license if the applicant affirms s/he has completed the CHRC requirement. Essentially, the MBP takes the applicant at her/his word that s/he has completed the CHRC and only learns of an applicant's failure to comply when the Board does not receive the results of the CHRC in a timely manner. Mr. Andrews further explained the instructions for completing the CHRC requirements, including instructions for out-of-state applicants, are found on the MBP's website. Mr. Andrews also testified the Respondent's current licensure status on the MBP website is listed as "active."

The Board asserts the Respondent's actions violated the above-noted provisions of the Health Occupations article and the appropriate sanctions for those violations is a reprimand, ethics training and a \$10,000.00 fine.

The Respondent concedes that he reported on his August 8, 2017 renewal application that he had submitted to the CHRC when he hadn't. He asserts, however, that he believed the Board would

⁵ As the DCCR is essentially a settlement conference, neither the Board nor the Respondent could offer details about what was discussed at the DCCR or what, if any, resolution they reached.

not approve his renewal application or grant him continued Maryland licensure until and unless he completed the CHRC. As he has a busy medical practice in Delaware and because he was not certain he wished to continue practicing in Maryland, the Respondent did not pursue the CHRC and only realized the CHRC was mandatory under Maryland law when he received the Board's August 13, 2018 Revocation Notice. According to the Respondent, although the Board sent its prior notifications of non-compliance with the CHRC requirements to his accurate mailing and email addresses of record, he did not receive those notifications.

According to the Respondent, he has maintained licenses to practice medicine in states other than Maryland, and for each of those licenses, he was not able to get his license unless and until he complied with all of the State licensure requirements. Furthermore, he has always received a physical paper license from the relevant state medical licensing boards in the mail; therefore, he assumed his Maryland license was not active because he had not yet submitted his fingerprints for the CHRC. Although the Respondent concedes he eventually found a copy of his current license in his email inbox, he asserts his failure to comply with the CHRC requirement was unintentional and he does not believe he should be sanctioned.

Analysis

Effective October 1, 2016, all MBP licensees must apply for a CHRC with a state Central Repository.⁶ HO § 14-308.1 (Supp. 2018). The purpose of the CHRC requirement is to ensure that licensed physicians do not pose "a threat to public health or safety." S.B. 449, 2015 Leg., 435th Sess. (Md. 2015) (enacted) (Fiscal & Policy Notice, Revised). The Board is authorized to impose disciplinary sanction on licensees who do not comply with the CHRC requirement. *Id.* Pursuant to HO § 14-313(b)(2), "[t]he Board may not issue a license if the

⁶ "Central Repository" means the Criminal Justice Information System Central Repository of the Department of Public Safety and Correctional Services. HO section 14-308.1(a).

criminal history record information required under § 14-308.1 of this subtitle has not been received.”

There is no dispute regarding the critical facts in this case. When the Respondent submitted his August 8, 2017 renewal application, he attested that he had submitted his fingerprints for a CHRC and he acknowledged on that same application that he faced disciplinary action if he failed to comply with the CHRC requirement. Indeed, the State also submitted evidence that before completing his application, a pop-up screen appeared on the Respondent’s computer which reminding the Respondent that by completing his renewal application, he was attesting that he had completed his CHRC and that failure to submit to the CHRC could result in disciplinary action. The Respondent had to check a box on the pop up screen stating that he had submitted his fingerprints “BEFORE attempting to complete his renewal application.” State Ex. 4. There is also no dispute the Board made numerous attempts to contact the Respondent to ensure his compliance with the CHRC requirement and that the Respondent’s license to practice medicine remained active during this time. Accordingly, although the Respondent ultimately complied with the CHRC requirement, for approximately a year and a half, he failed to do so. Therefore, I conclude the Respondent failed to submit to a CHRC in violation of HO § 14-404(a)(42).

Unprofessional Conduct in the Practice of Medicine

To constitute unprofessional conduct, the alleged misconduct must be “sufficiently intertwined with patient care to pose a threat to patients or to the medical profession.” *Cornfeld v. State Bd. of Physicians*, 174 Md. App. 456, 474 cert. denied, 400 Md. 647 (2007)(internal quotation omitted). In *Cornfeld*, the Circuit Court for Baltimore City affirmed the Board’s determination that the physician had engaged in unprofessional conduct in violation of HO § 14-404(a)(3) when he made false statements to hospital peer reviewers and Board investigators related to the settings for a surgical instrument he used on a patient. The Maryland Court of

Special Appeals determined in *Cornfeld* that the physician was subject to sanction under 14-404(a)(3) because his false or misleading statements directly related to a procedure he had recently performed on a patient and shifted blame from himself to other hospital staff.

The Court of Appeals amplified what constitutes misconduct of “in the practice of medicine” in *Kim v. Md. State Bd. of Physicians*, 423 Md. 523 (2011) when it explained that ‘in the practice of medicine’ applies not only to diagnosing and treating patients, but also to “misconduct relat[ing] to the effective delivery of patient care.” *Id.* at 541 (quoting *Finucan v. Md. Bd. of Physician Quality Assurance*, 380 Md. 577, 597 (Md. 2004)). To that end, the Court of Appeals announced in both *Kim* and *Freilich v. Upper Chesapeake Health Sys., Inc.*,⁷

A physician’s submission of false information ... in license renewal applications impedes the Board’s ability to make accurate determinations about a physician’s continued fitness.... [F]alse information could form the basis upon which the Board renews or grants a license, potentially to an unfit applicant. The Board is entitled to expect truthful submissions[.]

Freilich, 423 Md. at 715 (quoting *Kim* 423 Md. at 542).

In this instance, the Respondent clearly submitted false information when he stated on his renewal application that he had submitted to the CHRC when he had not. As I have stated, the purpose of HO § 14-308.1 mandating CHRCs is to gain sufficient information about a physician who may pose a threat to public safety based on his or her criminal background. S.B. 449, 2015 Leg., 435th Sess. (Md. 2015) (enacted) (Fiscal & Policy Notice, Revised). Indeed, according to the legislative history the Board developed what eventually became Senate Bill 449, the precursor to § 14-308,

after it was revealed that a Maryland doctor had been practicing in the State for almost two decades despite having previously served a prison sentence for rape in Florida in 1987; the doctor served 4 years of a 10-year sentence and began practicing medicine in Maryland in 1996. The doctor was recently charged with sexually assaulting a patient in Maryland; charges were eventually dropped ahead

⁷ 423 Md. 690 (2011).

of the scheduled September 2014 trial after the doctor agreed to surrender his license.

Id. I conclude that by falsely reporting that he had submitted to the CHRC, the Respondent prevented the Board from gaining an accurate snapshot of his criminal history. The Respondent's license remained active while the Board attempted to compel the Respondent's compliance with the CHRC requirement by repeatedly reaching out to the Respondent, but the Board had no way to verify whether the Respondent posed a threat to public safety based on his criminal background. Thus, the Board could not ensure, with confidence, that the Respondent did not pose a threat to his Maryland patients. That the Respondent's [REDACTED] [REDACTED] does not change the fact that he prevented the Board from verifying that criminal history, as is mandated by HO § 14-308.1. Therefore, this instance is in line with the reasoning of the *Kim* Court that such a false report on an application is sufficiently intertwined with the provision of medical care to constitute unprofessional conduct in the practice of medicine. Accordingly, I conclude the Respondent violated HO § 14-404(a)(3) (ii).

False Representation when seeking or making an application

I also conclude the Respondent made a false representation on his renewal application that he had complied with the CHRC requirement. The only reason the Respondent offered for that representation is that *he* believed, based upon past experience, that he would not be approved for a license *until* he completed the CHRC. I find, however, that the language of renewal application unequivocally states that by answering "yes" to question 29-D and by checking the box on the pop-up window regarding the CHRC requirement, the Respondent was attesting that he had *already* submitted to the CHRC. Furthermore, despite his testimony he did not believe his Maryland license would be active until he completed the CHRC, the Respondent conceded that he paid the \$512.00 renewal application fee and, upon a search in his email inbox, found a copy of his active Maryland license the Board emailed to him after he submitted his renewal application.

The Respondent protests that he did not intend to falsely represent that he had submitted the CHRC or to deceive the Board into thinking he had. Intent to deceive however is not required to reach the conclusion that an applicant or licensee made a false representation. Rather, an applicant or licensee violates HO § 14-404(a)(36) if his actions are willful and intentional. *Kim*, 423 Md. at 546.

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 physician’s position that willfulness requires knowledge of his false answer and intent to deceive, the *Kim* court determined that willfulness does not require a specific intent to deceive. Rather, the *Kim* court held that reporting a false answer is willful if it is made intentionally, without accident or inadvertence or ordinary negligence. *Id.* I find the language of 29-D was clear – it required the Respondent to assure he had submitted his CHRC *before* completing the application and the pop-up screen advising the Respondent of the same requirement was unequivocal. Regardless of his belief that his Maryland license would not be active until he completed a CHRC, I conclude the Respondent intentionally affirmed he had completed his CHRC by answering yes to answer 29-D and by checking the box on the pop-up screen. By so doing, he made false representations on his application when seeking his renewed license. Nothing more is required for a finding that the Respondent violated HO § 14-404(a)(36).

Fraud or deception to obtain a license

Although I have concluded the Respondent willfully made a false representation on his renewal application, I find he did not act fraudulently or deceptively 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 HO § 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).

I conclude that although the Respondent willfully reported he had submitted to the CHRC on his renewal application, he did not do so to deceive the Board into renewing his license. I find the Respondent credible that he believed, albeit erroneously, that he would not be eligible to receive retain his Maryland license unless he had completed the CHRC requirement. Indeed, on August 24, 2018, in his email response to the Board's August 13, 2018 Revocation Notice, the Respondent stated that he had considered not following through on continued licensure in Maryland because his Delaware practice had become so busy. Furthermore, on November 2, 2018, in an email response to Ms. Rubin's email inquiring whether the Respondent had completed the CHRC, the Respondent asked if his license renewal application would proceed if he completed the CHRC. Taken together, I find these statements support the Respondent's position that he believed his Maryland license was not valid until he completed the CHRC. I also find that the Respondent *should have* known his Maryland license was active and it was only by his lack of diligence and failure to respond the multiple attempts by the Board to compel his CHRC compliance that he was unaware of his

Maryland license status. Nevertheless, I do not conclude the Respondent acted (or failed to act in this case) with the intent to deceive the Board in the interest of obtaining a license.

In so concluding, I note the lack of intent to deceive does not absolve the Respondent of his responsibility to exercise due diligence as it pertains to the legal requirements of Maryland licensure. As I have stated, the Respondent's license remained active for more than 17 months during which time he could have practiced medicine in Maryland.⁸ By licensing physicians like the Respondent, the Board represents to the members of the general public that these physicians do not pose a threat to their wellbeing and safety. During the more than 17 months the Respondent failed to submit to the CHRC, the Board was prevented from adequately ascertaining the Respondent's criminal history, thereby potentially exposing the public to a threat to their safety and wellbeing.

Failure to cooperate in a lawful investigation

As an initial matter, it is instructive to identify when the Board began its investigation of the Respondent. As I have stated, the renewal application notified the Respondent that failing to submit to a CHRC could result in discipline. Section 14-401.1 delineates the Board's procedure for investigating potential disciplinary infractions and provides that "[t]he Board shall perform any necessary preliminary investigation regarding an allegation of grounds for disciplinary or other action brought to the Board's attention before the allegation is assigned to a disciplinary panel." HO § 14-401.1(a)(1). As the failure to submit the CHRC constituted grounds for discipline, I conclude the Board's investigation of the Respondent began when the Board initially contacted the Respondent to ascertain why it had not yet received the results of his CHRC.

As I have stated, the Respondent does not dispute that he failed to respond to multiple attempts by the Board requesting that he submit his CHRC. According the Respondent, although the

⁸ It is unclear why the Board opted to allow physicians to remain active pending compliance with the CHRC requirements. Presumably, the Board recognized the law was fairly new and gave currently-licensed physicians the benefit of the doubt and thus, was more lenient regarding compliance with the CHRC.

Board sent its correspondence to the correct email and postal addresses, he did not personally receive any of the Board's correspondence until its August 13, 2018 Revocation Notice. I conclude the Respondent is either not credible or he acted with a woeful lack of diligence as it pertains to his renewal application. It makes little sense that although the Respondent failed to open and read the Board's October 30, 2017 email and January 16, 2018 letter, the Respondent *happened* to open and respond to the Board's Revocation Notice. Rather, I conclude the Respondent received the Board's prior correspondence but either ignored it or chose not to open it. Regardless of whether the Respondent was aware of the Board's attempts to have him complete his CHRC and/or to ascertain why he had not done so, it was his responsibility to open and read the email and mail correspondence from the Board. By not doing so, he failed to cooperate in the Board's investigation into why he had not completed the CHRC.

Furthermore, once the Board made it clear to the Respondent that he was required to submit his fingerprints for the CHRC, he still failed to do so. Indeed, although the Respondent was advised in August 2018 he was required to submit his CHRC, as of on November 2, 2018, he still had not done so. In fact, on November 2, 2018, Ms. Rubin reached out to the Respondent in anticipation of his DCCR and asked if he had submitted his fingerprints to complete the CHRC. The Respondent asked Ms. Rubin how he could obtain the documents that would allow him to comply and Ms. Rubin directed the Respondent to call Mr. Andrews, who could guide him through the process. The Respondent did not contact Mr. Andrews and he did not complete the CHRC process until January 2019, not long before the instant hearing.

Whether intentional or otherwise, the Respondent failed to respond to important correspondence from the Board regarding his CHRC and Maryland license. Thus, he failed to cooperate with its investigation into whether the Respondent was subject to disciplinary sanction as

a result of his non-compliance with the CHRC requirement. Accordingly, he is subject to sanction under HO § 14-404 (a)(33).

For the reasons stated above, I conclude that the Board has proven that the Respondent violated all of the charges the State alleges under section 14-404 of the HO Article, except I conclude he did not engage in fraud or deceit in order to obtain a license under HO § 14-404(a)(1).

Sanction

The Board seeks to impose the disciplinary sanction of a reprimand, require the Respondent take an ethics course and assess a \$10,000.00 fine. HO § 14-404(a) (Supp. 2018); COMAR 10.32.02.09. COMAR 10.32.02.10 provides the guidelines for imposing sanctions when physicians violate HO § 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.

(c) 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 10.32.02.11, assuming a fine is appropriate, the minimum fine for willfully making a false representation on an application related to the practice of medicine and for failure to cooperate in a lawful investigation by the Board or a disciplinary panel is \$10,000.00. The minimum fine for non-sexual ethics-based unprofessional conduct in the practice of medicine is \$5,000.00.

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 three of the violations of HO § 10-404. COMAR 10.32.02.10. However, considering that the Respondent does not have any prior disciplinary record and he ultimately complied with the CHRC requirement, the Board offered a lesser sanction. In proposing the reprimand, ethics class and \$10,000.00 fine, the Board argued the Respondent acted carelessly regarding his renewal application and ignored multiple attempts to comply with the CHRC requirement. The Board argued that the Respondent's failure to act in accord with the CHRC requirement, or to even communicate with the Board about his failure to do so, is unacceptable. Accordingly, the Board believes its proposed sanctions are

reasonable. This is particularly so, explained the Board, in light of all of the resources the State has expended to compel the Respondent's compliance with the CHRC, including corresponding with the Respondent, planning and convening the DCCR, and preparing for and participating in the hearing before the OAH.

The Respondent maintained that because he did not intend to ignore the CHRC requirement or the Board's correspondence repeatedly asking him to comply, he should not be subject to sanction. The Respondent apologized for failing to submit the CHRC in a timely manner and for missing the Board's correspondence, and he reiterated that he believed submitting the CHRC was only necessary if he wished to retain his Maryland license. Because he was busy in Delaware, he believed by not completing the CHRC, the only consequence would be a lapse of his Maryland license.

The Respondent's belief, however, was patently incorrect, and his error is attributable solely to his own inaction or lack of diligence. Furthermore, although the Respondent may have overlooked his responsibility to submit to the CHRC, his failure to respond to the Board's numerous attempts to have him comply with the CHRC requirement is problematic. As the Respondent paid his \$512.00 and completed his application, including attesting that he had completed the CHRC, the Board was reasonable in concluding the Respondent intended to retain his Maryland license and to continue practicing medicine in Maryland.⁹ Accordingly, it had a duty to ensure that the Respondent did not have a criminal history that might jeopardize the welfare or safety of Maryland residents. For over seventeen months, the Respondent prevented the Board from verifying his suitability to practice. I have considered that the Board appears to have chosen to allow physicians who were licensed as of the October 1, 2016 effective date of the CHRC requirement to remain licensed pending their compliance with the CHRC. This is true

⁹ This is especially reasonable as the Respondent lives so close to Maryland, in Delaware.

even though HO § 14-313 dictates that the Board may not issue a license until a physician has complied with the CHRC requirement. The State did not offer an explanation regarding why the Board chose to allow the Respondent such an extended period of time during which he failed to comply with the requirement. Nevertheless, any complicity the Board may have in the protracted time during which the Respondent failed to communicate with the Board or submit his fingerprints for the CHRC is sufficiently addressed by the Board's choice to significantly reduce its proposed sanction from revocation and a heftier fine to a reprimand, a comparatively minimal fine of \$10,000.00 and the completion of an ethics course to buttress the Respondent's understanding of his ethical responsibility to abide by all of the regulations designed to ensure appropriate and safe medical care for Maryland residents. Accordingly, for the reasons stated above, I conclude the Board's proposed sanctions of a reprimand, a \$10,000.00 fine, and the Respondent's participation in an ethics course are reasonable.

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); failed to cooperate with a lawful investigation conducted by the Board or disciplinary panel in violation of Health Occupations section 14-404(a)(33); 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, failed to submit to a criminal history records check in violation of Health Occupations section 14-404(a)(42).

I further conclude the Respondent did not fraudulently or deceptively obtain or attempt to obtain a license in violation of Health Occupations section 14-404(a)(1).

I further conclude that a reprimand, the requirement that the Respondent take an ethics course and the imposition of a \$10,000.00 fine represent a reasonable exercise of discipline by the Board.

PROPOSED DISPOSITION

I **PROPOSE** that the Maryland State Board of Physicians' charges that Respondent Asit Patel, M.D., License No. D56805, violated sections 14-404(a)(3)(ii), 14-404(a)(33), 14-404(a)(36) and 14-404(a)(42) of the Health Occupations Article be **UPHELD**;


I further **PROPOSE** that the Maryland State Board of Physicians' charge that Respondent Asit Patel violated section 14-404(a)(1) be **REVERSED**;

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

I further **PROPOSE** that the Respondent be required to participate in an ethics course; and

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

June 6, 2019
Date Decision Mailed



Jennifer M. Carter Jones
Administrative Law Judge

JCJ/cmh
#180038

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:

Christine Farrelly, Acting Executive Director
Compliance Administration
Maryland Board of Physicians
4201 Patterson Avenue
Baltimore, MD 21215

Dawn L. Rubin
Assistant Attorney General
Administrative Prosecutor
Office of the Attorney General
300 West Preston Street, Suite 201
Baltimore, MD 21201

Rosalind Spellman, Administrative Officer
Health Occupations Prosecution and Litigation Division
Office of the Attorney General
300 West Preston Street, Room 201
Baltimore, MD 21201

Asit Patel, M.D.



Asit Patel, MD



Nicholas Johansson, Principal Counsel
Health Occupations Prosecution and Litigation Division
Office of the Attorney General
300 West Preston Street, Room 201
Baltimore, MD 21201