

|                             |   |                        |
|-----------------------------|---|------------------------|
| IN THE MATTER OF            | * | BEFORE THE             |
| LINDSAY M. BRATHWAITE, M.D. | * | MARYLAND STATE BOARD   |
| Applicant for Reinstatement | * | OF PHYSICIANS          |
|                             | * | Case Number 2219-0180B |
| * * * * *                   |   |                        |

**FINAL DECISION AND ORDER**

**Procedural History**

On June 18, 2019, Disciplinary Panel B of the Maryland State Board of Physicians (the “Board”) issued a Notice of Intent to Deny Application for Reinstatement of Medical License under the Maryland Medical Practice Act (“Notice of Intent”) against the Applicant Lindsay M. Brathwaite, M.D. The Notice of Intent was based on the following provisions of the Health Occupations Article:

**§ 14-205. Miscellaneous powers and duties.**

...

(b) *Additional powers.* . . .

(3) Subject to the Administrative Procedure Act and the hearing provisions of § 14-405 of this title, a disciplinary panel may deny a license to an applicant or, if an applicant has failed to renew the applicant’s license, refuse to renew or reinstate an applicant’s license for:

(i) Any of the reasons that are grounds for action under § 14-404 of this title[.]

**§ 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:

...

- (21) Is disciplined by a licensing or disciplinary authority or convicted or disciplined by a court of any country or disciplined by any branch of the United States uniformed services or the Veterans' Administration for an act that would be grounds for disciplinary action under this section[.]

Grounds for disciplinary action under H.O. §14-404(a)(21), included the following grounds under H.O. § 14-404(a):

- (3) Is guilty of: . . . (ii) Unprofessional conduct in the practice of medicine;  
...
- (19) Grossly overutilizes health care services; [and]  
...
- (22) Fails to meet appropriate standards as determined by appropriate peer review for the delivery of quality medical and surgical care performed in an outpatient surgical facility, office, hospital, or any other location in this State[.]

The Applicant requested a hearing, and, on September 25, 2019, the case was referred to the Office of Administrative Hearings (“OAH”) for an evidentiary hearing.

A Notice of Scheduling Conference was issued by OAH, on September 30, 2019, mailed to the Applicant’s address of record, and was not returned by the U.S. Postal Service for any reason. On October 11, 2019, an Administrative Law Judge (“ALJ”) conducted an in-person Scheduling Conference, at OAH, in Hunt Valley, Maryland. The State was represented by the Administrative Prosecutor from Health Occupations and Litigation Division of the Maryland Office of the Attorney General, who appeared at the Scheduling Conference. Neither the Applicant nor anyone authorized to represent the Applicant appeared for the Scheduling Conference after proper notice. At the Scheduling Conference, a scheduling order was established, and dates for the following were selected: a Pre-Hearing Conference, submission of Pre-Hearing Conference statements, discovery requests, and the merits hearing. On October 21, 2019, the ALJ issued a scheduling order setting forth those dates, with copies to the parties. The Applicant’s copy of the scheduling order was not returned by the postal service for any reason.

On October 28, 2019, OAH issued a Notice of In-Person Pre-Hearing Conference (the “notice”) to the parties via first class mail at their respective address of record. COMAR 28.02.01.05A, C(3). The notice stated that a Pre-Hearing Conference in this matter was scheduled for November 13, 2019, at 9:30 a.m., at OAH in Hunt Valley, Maryland. COMAR 28.02.01.05B(1). The notice further advised the parties that failure to appear for the Pre-Hearing Conference might result in an unfavorable decision for the party failing to appear, or in a dismissal of the case. COMAR 28.02.01.05B(6). The postal service did not return the Applicant’s notice to OAH as undeliverable, unable to forward, or for any other reason. The Applicant made no request for postponement, appearance by telephone or video-conference, or a waiver of his presence prior to the Pre-Hearing Conference.

On November 13, 2019, the ALJ was prepared to convene the Pre-Hearing Conference at the scheduled location and time. Administrative Prosecutors from the Health Occupations Prosecution and Litigation Division of the Office of the Attorney General appeared on behalf of the State and were prepared to proceed. Neither the Applicant nor anyone authorized to represent the Applicant appeared. The ALJ called the case a number of times, and still neither the Applicant nor anyone authorized to represent the Applicant appeared. The ALJ then contacted the OAH Clerk’s Office and spoke with the docket specialist assigned to these proceedings and to the OAH receptionist to inquire whether the Applicant had checked in for the hearing or had contacted OAH to request a postponement or delay in the start of the proceedings. The docket specialist advised the ALJ that the Applicant had not contacted OAH to request a postponement or delay in the commencement of proceedings and the receptionist informed the ALJ that the Applicant had not checked in with her to indicate his presence.

The ALJ waited more than twenty minutes from the scheduled start time of the Pre-Hearing Conference, during which time neither the Applicant nor anyone authorized to represent the Applicant appeared. The ALJ then convened the Pre-Hearing Conference and the State moved for the entry of an order of default against the Applicant.

Under OAH's Rules of Procedure, "[i]f, after receiving proper notice, a party fails to attend or participate in a *prehearing conference*, hearing, or other stage of a proceeding, the judge may proceed in that party's absence or may, in accordance with the hearing authority delegated by the agency, issue a final or proposed default order against the defaulting party." COMAR 28.02.01.23A (emphasis added). Section 14-405(d) and (e) of the Health Occupations Article is consistent with OAH's Rules of Procedure.

Based upon the facts set forth above, the ALJ found that proper notice was sent to the Applicant, that the Applicant failed to notify OAH of a change in his address, if any; failed to request a postponement of the proceeding or a conference conducted by telephone or video or a waiver of his required presence for the Pre-Hearing Conference; and failed to appear for the Pre-Hearing Conference after proper notice. COMAR 28.02.01.05, .23A. Panel A adopts these ALJ findings.

On November 27, 2019, the ALJ issued a Proposed Default Order, based upon the OAH proceedings described above, which the ALJ recounted in the proposed order. The ALJ thus proposed that the Panel:

1. Find the Applicant in default;
2. Terminate these proceedings and enter a disposition of dismissal against the Applicant;

3. Affirm the determination to deny the Applicant's application for the reinstatement of his license to practice medicine in Maryland; and

4. Cancel the hearing on the merits scheduled for January 6, 2020.

On November 27, 2019, copies of the ALJ's Proposed Default Order were mailed to the Applicant, the administrative prosecutors, and the Board. The proposed order notified the parties that they may file written exceptions to the proposed decision but must do so within 15 days of the date of the proposed order. The proposed order stated that any exceptions must be sent to the Board disciplinary panel with attention to the Board's Executive Director. Neither party filed exceptions.

The case came before Board Disciplinary Panel A for the final disposition.

#### **FINDINGS OF FACT**

Because Panel A concludes that the Applicant defaulted, the following findings of fact are adopted from the Allegations of Fact set forth in the June 18, 2019, Notice of Intent and are deemed proven by the preponderance of the evidence:

1. The Applicant was initially licensed to practice medicine in the State of Maryland on or about August 14, 2003, under License Number D60790. The Applicant renewed his medical license until 2014, when he did not apply for renewal of his license. As a result, the Applicant's Maryland medical license expired on September 30, 2014.

2. While practicing, the Applicant's primary practice area was dermatology.

3. On or about November 19, 2018, the Applicant submitted to the Board his Application in which he sought reinstatement of his Maryland medical license.

4. In his Application, the Applicant answered "YES" to Questions 13(b), (k), and (p), which state the following:

13. Character and Fitness Questions . . . .

Since your last renewal:

...

(b) Has a state licensing or disciplinary board (including Maryland), a comparable body in the armed services or the Veterans Administration, taken action against your license? Such actions include, but are not limited to, limitations of practice, required education admonishment or reprimand, suspension, probation or revocation.

...

(k) Have any malpractice claims or other claims for money damages been filed against you? Include past claims as well as any claim that is now pending, has been dismissed, has been settled, or which has resulted in a damages award against you or your medical practice.

...

(p) Have you surrendered your license or allowed it to lapse while you were under investigation by any licensing or disciplinary board of any jurisdiction, any entity of the armed services or the Veterans Administration?

## **BOARD INVESTIGATION**

5. The Board initiated an investigation into the Applicant's representations in his Application and determined that he was subject to prior disciplinary actions by the Delaware Board of Medical Licensure and Discipline (the "Delaware Board") and the Medical Board of California (the "California Board").

### **Probation, Delaware Board (2014)**

6. On or about April 16, 2002, the Delaware Board initially licensed the Applicant to practice medicine in the State of Delaware.

7. On or about October 7, 2014, the Delaware Board accepted an Order issued by a Delaware Board hearing panel, which had conducted an eight-day hearing into eleven separate allegations about the Applicant's medical practice. The hearing panel found that the Applicant unethically performed hundreds of biopsies and surgical procedures without establishing any

legitimate medical need for doing so and “with an apparent motivation to increase income,” failed to maintain sterile practices, and wrote at least three prescriptions in the names of his employees without establishing a doctor-patient relationship. The hearing panel also found:

[The Applicant] knowingly and with willful and wanton negligence, without regard for the safety of his patients allowed cross-contamination of blood products, exposing patients to possibly contracting hepatitis, AIDS and other blood-born [*sic*] pathogens by deliberately avoiding sterilization techniques. The Panel is particularly concerned with images from [the Applicant’s] practice that included, by way of example, multiple bottles of Lidocaine with multiple needles inserted with no attached syringes, left exposed to the elements. These patients have no idea that they were so exposed by [the Applicant] . . .

Further, the Panel continues to find that the evidence supports that no method of clinical diagnoses except biopsies were utilized by [the Applicant] in his practice, making it clear that his primary focus was profit, and not the care and well-being of his patients. In so doing, [the Applicant] deliberately, despite being well trained in medical school and during his residency, exposed patients to great risk in his use of blood products.

Delaware Board Order, at 1-2 (October 7, 2014).

8. The Delaware Board further accepted the hearing panel’s conclusions that the Applicant violated: 24 Del. Code § 1731(b)(1), by engaging in unethical practices in the connection with the practice of medicine; 24 Del. Code § 1731(b)(3), by engaging in dishonorable and unethical conduct likely to harm the public and his patients; and 24 Del. Code § 1731(b)(17), by violating provisions of the Delaware Medical Practice Act in a manner that more probably than not will harm or injure the public and his patients.

9. The Delaware Board placed the Applicant’s Delaware medical license on probation for five years. As a condition of his probation, the Applicant was prohibited from performing any biopsies or surgical procedures. The Delaware Board also imposed a \$10,000 fine against the Applicant.

**Revocation, Delaware Board (2015)**

10. On or about August 19, 2015, the Delaware Board issued an Order Accepting Complaint and Granting Emergency Temporary Suspension, which suspended the Applicant's Delaware medical license. The Delaware Board determined that the Applicant was performing biopsies on a daily basis and punch biopsies and excisions on a weekly basis despite the Delaware Board prohibiting from doing so while he was on probation.

11. On or about October 3, 2015, the Applicant agreed to enter into a Consent Agreement in which he acknowledged performing biopsies and surgical procedures while on probation and prohibited from doing so. The Applicant agreed that his Delaware medical license would be permanently revoked upon the Delaware Board's acceptance of the Consent Agreement.

12. On or about November 3, 2015, the Delaware Board issued an Order accepting the Consent Agreement and permanently revoking the Applicant's Delaware medical license.

**Revocation, California Board (2015)**

13. On or about June 7, 2001, the California Board initially licensed the Applicant to practice medicine in the State of California.

14. On or about January 20, 2015, the California Board issued an Accusation against the Applicant alleging unprofessional conduct based on the findings and conclusions of the Delaware Board in their 2014 Order imposing probation. The Applicant did not respond to the Accusation.

15. On or about June 17, 2015, the California Board issued a Default Decision and Order, which found that the Delaware Board's disciplinary action against the Applicant were grounds for discipline in California. The California Board revoked the Applicant's California medical license, effective July 17, 2015.

16. The Applicant defaulted in his proceeding before the ALJ at OAH concerning the Notice of Intent by failing to appear at the Pre-Hearing Conference scheduled for November 13, 2019.

### **CONCLUSIONS OF LAW**

Pursuant to the Applicant's default, *see* State Gov't § 10-210(4), Panel A denies the Applicant's application for the reinstatement of his license, under Health Occ. § 14-205(b)(3)(i), because the Applicant's acts, as described above, are grounds for action under Health Occ. § 14-404(a)(21), for his being disciplined by a licensing or disciplinary authority for acts that, if committed in Maryland, would be grounds for disciplinary action under Health Occ. § 14-404(a). The underlying grounds for action under Health Occ. § 14-404(a)(21) that would be grounds for disciplinary action if committed in Maryland include the following provisions of Health Occ. § 14-404(a): (3)(ii), is guilty of unprofessional conduct in the practice of medicine; (19), grossly overutilizes health care services; and (22), fails to meet appropriate standards as determined by appropriate peer review for the delivery of quality medical and surgical care performed in an outpatient surgical facility, office, hospital, or any other location in the State.

### **DISPOSITION**

The ALJ proposed that the Panel deny the Applicant's application for the reinstatement of his license to practice medicine in Maryland. No exceptions to the ALJ's proposed decision were filed. Considering the nature and extent of the Applicant's misconduct, which resulted in the revocation of his license to practice medicine in Delaware, the only appropriate disposition in this matter is to deny his application for the reinstatement of his license to practice medicine in Maryland. The ALJ also proposed a disposition of dismissal. The Panel does not believe that dismissal is the appropriate term for the resolution of this matter at this posture and, therefore,

does not accept that proposal. To be clear, though, the Applicant's reinstatement application is denied.

**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 A, hereby

**ORDERED** that the application of Lindsay M. Brathwaite, M.D. for the reinstatement of his license to practice medicine in Maryland is **DENIED**; and it is further

**ORDERED** that this is a public document.

*Signature on File*

06/05/2020  
Date

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

**NOTICE OF RIGHT TO APPEAL**

Pursuant to § 14-408(a) of the Health Occupations Article, the Applicant 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 this Final Decision and Order is mailed. The date of the cover letter accompanying this Final Decision and Order is the date the decision is mailed. The petition for judicial review must be made as directed in the Maryland Administrative Procedure Act, Md. Code Ann., State Gov't § 10-222, and Maryland Rules 7-201 *et seq.*

If the Applicant petitions for judicial review, the Board is a party and should be served with the court's process. In addition, the Applicant should send a copy of his petition for judicial review to the Board's counsel, David Wagner, Assistant Attorney General, Office of the Attorney General, 300 W. Preston Street, Suite 302, Baltimore, Maryland 21201. The

administrative prosecutor is not involved in the circuit court process and does not need to be served or copied on pleadings filed in circuit court.