

IN THE MATTER OF * BEFORE THE
OLUWATOBI A. YEROKUN, M.D. * MARYLAND STATE
Respondent * BOARD OF PHYSICIANS
License Number: D90044 * Case Number: 2223-0122A

* * * * *

FINAL DECISION AND ORDER

PROCEDURAL HISTORY

Oluwatobi A. Yerokun, M.D., was licensed to practice medicine in the State of Maryland on July 20, 2020, under License Number D90044. On September 21, 2022, in the United States District Court for the Western District of Missouri, Dr. Yerokun pled guilty to one count of Conspiracy to Make False Statements Related to Health Care Matters, 18 U.S.C. § 371 (*U.S.A v. Oluwatobi Alabi Yerokun*, Case # 22-cr-221-HFS).¹

On February 2, 2023, the Office of the Attorney General filed with the Maryland Board of Physicians (the “Board”) a petition to suspend Dr. Yerokun’s license to practice medicine (the “Petition to Suspend”) and a proposed show cause order pursuant to section 14-404(b)(1) of the Maryland Medical Practice Act. On May 19, 2023, Board Disciplinary Panel A issued an Order suspending the license of Dr. Yerokun, pursuant to Health Occ. § 14-404(b)(1).²

On March 13, 2023, Dr. Yerokun was sentenced to five years of supervised probation and ordered to pay restitution in the amount of \$399,021.00. On August 4, 2023, the Office of the

¹ 18 U.S.C. § 371 states in pertinent part:

If two or more persons conspire either to commit any offense against the United States, or to defraud the United States, or any agency thereof in any manner or for any purpose, and one or more of such persons do any act to affect the object of the conspiracy, each shall be fined under this title or imprisoned not more than five years, or both.

² At the time the Petition was filed in this case, Dr. Yerokun had not yet been sentenced. Accordingly, the Petition to Suspend Dr. Yerokun’s license was filed pursuant to Health Occ. § 14-404(b)(1) instead of a petition to revoke pursuant to Health Occ. § 14-404(b)(2), which is now warranted after the completion of sentencing.

Attorney General filed with the Board a petition to revoke Dr. Yerokun's license to practice medicine (the "Petition") and a show cause order pursuant to section 14-404(b)(2) of the Maryland Medical Practice Act. The statute provides:

(2) After completion of the appellate process if the conviction has not been reversed or the plea set aside with respect to a crime involving moral turpitude, a disciplinary panel shall order the revocation of a license on the certification by the Office of the Attorney General.

Attached to the Petition were copies of the certified docket entries, criminal information, plea agreement, the judgment, and plea agreement and sentencing hearing transcripts. Dr. Yerokun was ordered by the Board to show cause in writing, on or before September 6, 2023, if there was any reason why his license should not be revoked. On September 6, 2023, the Board received a response from Dr. Yerokun presenting the argument that his license should not be revoked because his conviction did not involve moral turpitude. Dr. Yerokun requested a limited evidentiary hearing on whether his crime involved moral turpitude. Disciplinary Panel A declines to grant Dr. Yerokun's request for a hearing pursuant to COMAR 10.32.02.07E(3). Having reviewed and considered the entire record in this case, Panel A issues this Final Decision and Order. COMAR 10.32.02.07H(1).

FINDINGS OF FACT

Panel A finds the following:

1. Oluwatobi A. Yerokun, M.D., was licensed to practice medicine in the State of Maryland on July 20, 2020, under License Number D90044. His license was renewed and was scheduled to expire on September 30, 2023.
2. On September 21, 2022, the United States Attorney's Office for the Western District of Missouri filed an Information alleging Dr. Yerokun violated 18 U.S.C. § 371 –

Conspiracy to Make False Statements Regarding Health Care Matters (*U.S.A v. Oluwatobi Alabi Yerokun*, Case # 22-cr-221-HFS).

3. Also, on September 21, 2022, Dr. Yerokun pleaded guilty to one count of Conspiracy to Make False Statements Related to Health Care Matters, 18 U.S.C. §371.

4. The factual basis for Dr. Yerokun's guilty plea, agreed to by the parties, included the following statements:

From on or about February 2019 through April 2021, Oluwatobi Alabi Yerokun was a physician who practiced medicine, among other places, in the State of Missouri.

Medicare and Medicaid were "health care benefit programs" as defined by 18 U.S.C. § 24(b) and "Federal health care programs" as set forth in 42 U.S.C. § 1320a-7b(b).

On multiple occasions between 2015 and 2018, Yerokun signed enrollment applications with Medicare which stated:

I agree to abide by Medicare laws, regulations, and program instructions that apply to me...I understand that payment of a claim by Medicare is conditioned upon the claim and the underlying transaction complying with such laws, regulations, and program instructions (including, but not limited to, the Federal Anti-Kickback Statute...)

...

From on or about February 2019 to April 2021, certain individuals and entities, such as marketing, physician recruiting, and telemedicine companies, some of whom were unknown to Yerokun, developed a scheme that targeted Medicare and Medicaid patients to obtain reimbursement from those programs and information about purported "patients," such as their insurance information. Company A, a locum tenens physician staffing company, solicited Yerokun and contracted with him to work as a telemedicine provider...Company A gave Yerokun access to electronic portals so that he could receive information about the patients assigned to him. The information included, among other things, the patient's demographic information, the identity of the insurance provider such as Medicare and Medicaid,

and the type of durable medical equipment (DME) or genetic testing that Yerokun was supposed to order for them.³

Much of the patient information that Yerokun received from Company A was pre-populated, that is, it had been filled in before Yerokun received it... According to Yerokun, he understood his assignment to be to only review the charts. Through the electronic portal that Company A made available to defendant Yerokun, he electronically signed the patient forms and orders he received from Company A. Yerokun signed the patient forms and certified that the DME and genetic tests were medically necessary. For the genetic tests, he also signed a separate letter of medical necessity.

Yerokun had no prior doctor-patient relationship with the Medicare or Medicaid beneficiaries and did not see or communicate with them. Before Yerokun signed the orders, he made little effort to find out how or from whom the patient information was obtained, who collected the information, the qualifications of any person gathering or providing the information, or whether the information was accurate and complete. Yerokun provided no follow-up care for these patients after he signed the orders for them to receive DME or genetic testing.

By knowingly and willfully electronically signing the orders, Yerokun made false and fraudulent statements and documents by certifying medical necessity. The statements and documents were false because, among other things, Yerokun did not have adequate information to access medical necessity for the beneficiaries. In addition, he rarely, if ever, declined to sign any orders. Moreover, for most of the patients, less than a minute elapsed between when he accessed the patient's information through the electronic portal and when he signed the order for DME or genetic testing. Accordingly, he knew his false and fraudulent statements were untrue when he made them.

Yerokun's false statements and representations concerned material facts because Medicare and Medicaid would not have paid the claims submitted by the DME companies and testing laboratories if they had known that Yerokun had no physician-patient relationship with the beneficiaries, did not see or evaluate them, and spent only seconds to minutes reviewing the patient information.

³ The Plea Agreement stated that because the type of genetic testing Dr. Yerokun ordered did not diagnose cancer, Medicare only covered such tests in limited circumstances. Medicare did not cover the genetic testing for beneficiaries who did not have cancer or lacked symptoms of cancer.

...Yerokun's orders for DME and genetic testing were not properly payable and reimbursable by Medicare and Medicaid because, among other reasons, Yerokun had no physician-patient relationship with the beneficiaries and did not see or evaluate them. Therefore, Yerokun was not able to accurately certify that the services were medically necessary.

...

Company A paid Yerokun approximately \$20 for each order for DME or genetic testing that he signed. Between March 2019 and April 2021, Company A paid Yerokun \$44,860 by electronically depositing funds into a bank account [Yerokun maintained]. During this time period, Yerokun ordered DME and genetic tests for 2,184 Medicare beneficiaries.

5. On September 21, 2022, the U.S. District Court for the Western District of Missouri accepted Dr. Yerokun's guilty plea.

6. On May 19, 2023, Board Disciplinary Panel A issued an Order suspending the license of Dr. Yerokun, pursuant to Health Occ. § 14-404(b)(1).

7. On March 13, 2023, Dr. Yerokun was sentenced to five years of supervised probation and ordered to pay restitution in the amount of \$399,021.00.

8. The time for filing an appeal has passed, the conviction has not been reversed, and the guilty plea has not been set aside.

DISCUSSION

Pursuant to COMAR 10.32.02.07E(2), Dr. Yerokun may respond to the order to show cause, in writing, to address the following limited issues: "(a) Lack of conviction or plea; (b) Whether the crime is one involving moral turpitude; (c) Misidentity of the respondent with the defendant in the criminal matter; and (d) Other relevant issues, if any, other than mitigation." Dr. Yerokun submitted a response to the Petition arguing that the crime he pled guilty to was not a crime involving moral turpitude and asking to address the Panel at a limited evidentiary hearing on the same issue. The ability to address the panel at a hearing, however, is "discretionary based on the existence of genuine issues of material fact or law as determined by the disciplinary panel."

COMAR 10.32.02.07E(3). Because the Panel has already determined that Dr. Yerokun's conviction for Conspiracy to Make False Statements Related to Health Care Matters is a crime involving moral turpitude there are no material issues of law to resolve, and Dr. Yerokun does not dispute that he was convicted of the offense. The Panel, in its discretion, therefore, denies Dr. Yerokun's request for a hearing.

Section 14-404(b)(2) of the Health Occupations Article provides, "After completion of the appellate process if the conviction has not been reversed or the plea has not been set aside with respect to a crime involving moral turpitude, a disciplinary panel shall order the revocation of a license on the certification by the Office of the Attorney General." In the Final Decision and Order, issued on May 19, 2023, Panel A determined that Dr. Yerokun's conviction and guilty plea to one count of Conspiracy to Make False Statements Related to Health Care Matters, 18 U.S.C. § 371, is a crime involving moral turpitude and suspended Dr. Yerokun's license to practice medicine. The relevant portion of the discussion section from the May 19, 2023 order is as follows:

Health Occ. §14-404(b)(1) mandates the automatic suspension of a physician's medical license when a disciplinary panel concludes that a physician was convicted of or pleads guilty to a crime involving moral turpitude.⁴ Under Health Occ. §14-404(b)(1), a disciplinary panel has the obligation and discretion to determine what types of crimes are crimes involving moral turpitude for licensing and disciplinary purposes. "[I]t is settled that whatever else [moral turpitude] may mean . . . a crime in which an intent to defraud is an essential element is a crime involving moral turpitude. It is also settled that the related group of offenses involving intentional dishonesty for purposes of personal gain are crimes involving moral turpitude[.]" *Id.* at 459-60. "[I]n the context of a licensing board's review of the conduct of its licensee, the concept of moral turpitude is rather broad." *Oltman v. Maryland State Bd. Of Physicians*, 162 Md. App. 457, 483 (2005).

The Court of Appeals has also established that "[a] guilty plea is an admission of conduct that constitutes all the elements of a formal criminal charge"

⁴ At the time the Petition was filed, Dr. Yerokun had not been sentenced, which is why the panel proceeded under Health Occ. §14-404(b)(1) instead of Health Occ. §14-404(b)(2).

and that [b]y entering a plea of guilty, the accused is not simply stating that he did the discrete acts described in the indictment; he is admitting guilt of a substantive crime.” *Metheny v. State*, 359 Md. 576, 599 (2000) (internal citations and quotation marks omitted). A guilty plea “also serves as a stipulation that no proof by the prosecution need [be] advanced. . . . It supplies both evidence and verdict, [thus] ending [the] controversy.” *Id.*

Dr. Yerokun’s Crimes Involved Moral Turpitude.

Dr. Yerokun argues that the crime he pled guilty to is not a crime involving moral turpitude because it did not involve the prescribing of controlled substances or impersonating another. Dr. Yerokun asserts that he was naïve, and he relied on the Company’s assurances that he did not need to contact the patients or conduct a more thorough examination. Dr. Yerokun contends that his crime does not rise to the level of a crime involving moral turpitude because the Company was the mastermind behind the scheme to defraud Medicare and Medicaid, and he had a limited role in the operation.

“Determining whether an individual has been convicted of a crime involving moral turpitude ‘necessarily begins with an examination of the criminal statute itself.’” *Burke v. Maryland Bd. of Physicians*, 250 Md. App. 334, 348, *cert. denied*, *Burke v. Md. Bd. of Physicians*, 475 Md. 705 (2021) (quoting *Attorney Grievance Comm’n of Md. v. Walman*, 280 Md. 453, 460 (1977)). The language of the statute that Dr. Yerokun pled guilty to, 18 U.S.C. § 371, is:

If two or more persons conspire either to commit any offense against the United States, or to defraud the United States, or any agency thereof in any manner or for any purpose, and one or more of such persons do any act to effect the object of the conspiracy, each shall be fined under this title or imprisoned not more than five years, or both.

Read together with the elements of the crime enumerated in the plea agreement, an intent to defraud is an essential element of the crime that Dr. Yerokun pled guilty to. A “significant characteristic of conspiracy to commit a crime is that the defendant, to be found guilty of conspiracy, must have a specific intent to commit the offense which is the object of the conspiracy.” *Alston v. State*, 414 Md. 92, 114-15 (2010). Accordingly, through Dr. Yerokun’s conspiracy, he possessed the specific intent to knowingly defraud the U.S. Government, which constitutes a crime involving moral turpitude *per se*. Based on the analysis of the elements of the crime to which he pled guilty, Dr. Yerokun’s level of culpability is irrelevant.

In addition to the elements of the crime, the facts in support of the guilty plea also establish that Dr. Yerokun’s crime involved moral turpitude. In considering the facts of the case, the relevant consideration is whether the crime “was accompanied by a fraudulent or dishonest intent.” *Walman*, 280 Md. at 462.

In pleading guilty, Dr. Yerokun admitted that he knowingly and willfully made false and fraudulent statements and documents by certifying medical necessity for genetic medical testing or DME. Dr. Yerokun admitted that he never saw the patients and, for most of the patients, spent less than a minute between when he accessed the patient's information through the electronic portal and when he signed the order for DME or genetic testing. Dr. Yerokun also admitted to accepting money in exchange for each order for DME or genetic testing that he signed even though he was not able to accurately certify that the services were medically necessary. In doing so, Dr. Yerokun submitted fraudulent health care claims to the government for purposes of his own personal gain. *Walman*, 280 Md. at 459-60. Therefore, the facts of this case also establish that Dr. Yerokun pled guilty to a crime involving moral turpitude.

Request for a Hearing.

Dr. Yerokun argues that “[a]t a minimum, he should be afforded a hearing before any action is taken because his guilty plea does not involve a fact-pattern and crime of moral turpitude.” As discussed above, the Panel finds that Dr. Yerokun did plead guilty to a crime involving moral turpitude based on the elements of the crime and the facts in support of the guilty plea. In enacting Health Occ. § 14-404(b)(1), the Maryland General Assembly has authorized the mandatory suspension of a license without the need for a hearing for crimes involving moral turpitude prior to sentencing or during the pendency of any appellate proceedings. The Court of Appeals in *Felsenberg* determined that “[t]he intent of the Legislature in directing summary treatment of a charge based on the conviction of a crime involving moral turpitude is clear.” 351 Md. at 304.

In this case, the State appropriately initiated suspension procedures under Health Occ. § 14-404(b)(1). Unlike cases charged under Health Occ. § 14-404(a), where a licensee has the right to an evidentiary hearing and the opportunity to appear for a settlement conference, there is no statutory or regulatory right to a hearing for cases charged under Health Occ. § 14-404(b). Rather, the decision to grant a hearing is discretionary based on the existence of genuine issues of material fact or law as determined by the disciplinary panel. COMAR 10.32.02.07E(3). The *Felsenberg* Court explained, “when the charge rests solely upon the conviction, there is no need to inquire into the underlying conduct” and that the question of “[w]hether the crime is one involving moral turpitude is an issue which ordinarily may be resolved without the need for evidence or fact-finding.” 351 Md. at 303. Dr. Yerokun’s “guilty plea served as a means of providing for an expedited and summary disposition by the Board.” *Burke*, 250 Md. App. at 359.

The determination of whether the crime in this case involved moral turpitude is a question of law, which does not require an evidentiary hearing or consideration of any facts beyond the elements of the conviction itself. Accordingly, Dr. Yerokun’s request for a hearing is denied.

Panel A adopts and incorporates the reasoning set forth in the discussion above. The appellate process is now complete, and Dr. Yerokun's conviction and guilty plea have not been set aside, as a result, Panel A is now required to order the revocation of Dr. Yerokun's license to practice medicine pursuant to section 14-404(b)(2) of the Health Occupations Article.

CONCLUSION OF LAW

In the May 19, 2023, Final Decision and Order, Panel A concluded that Dr. Yerokun pled guilty to a crime involving moral turpitude. Pursuant to section 14-404(b)(2) of the Health Occupations Article, based upon Dr. Yerokun's guilty plea to a crime involving moral turpitude and completion of the appellate proceedings, Panel A is now required to order the revocation of Dr. Yerokun's license to practice medicine in Maryland.

ORDER

It is, by Board Disciplinary Panel A, hereby:

ORDERED that the license of Oluwatobi A. Yerokun, M.D., license number D90044, to practice medicine in Maryland is **REVOKED**, as mandated by Health Occ. § 14-404(b)(2); and it is further

ORDERED that the suspension imposed in the May 19, 2023 Order is **TERMINATED AS MOOT**; and it is further

ORDERED that this is a **PUBLIC DOCUMENT**. See Md. Code Ann., Health Occ. § 1-607, 14-411.1(b)(2) and Gen. Prov. § 4-333(b)(6).

09/21/2023
Date

Signature On File

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

NOTICE OF RIGHT TO PETITION FOR JUDICIAL REVIEW

Pursuant to Md. Code Ann., Health Occ. § 14-408, Dr. Yerokun has the right to seek judicial review of this Final Decision and Order. Any petition for judicial review shall be filed within thirty (30) days from the date of mailing of this Final Decision and Order. The cover letter accompanying this final decision and order indicates the date the decision is mailed. Any petition for judicial review shall be made as provided for in the Administrative Procedure Act, MD. CODE ANN., STATE GOV'T § 10-222 and Title 7, Chapter 200 of the Maryland Rules of Procedure.

If Dr. Yerokun files a petition for judicial review, the Board is a party and should be served with the court's process at the following address:

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

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

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