

IN THE MATTER OF
FRANK EDWARD GAINER
Respondent
Unlicensed

* **BEFORE THE**
* **MARYLAND STATE**
* **BOARD OF PHYSICIANS**
* **Case Number: 2220-0046**

* * * * *

ORDER OF DEFAULT

On May 24, 2021, Disciplinary Panel B of the Maryland State Board of Physicians (“Board”) charged **FRANK EDWARD GAINER**, an unlicensed individual, with practicing naturopathic medicine without a license and misrepresenting himself as a practitioner of naturopathic medicine. *See* Md. Code Ann., Health Occ. §§ 14-5F-29, 14-5F-30 (2014 Repl., Vol. & 2020 Supp.). On August 26, 2021, the case was referred to the Office of Administrative Hearings (“OAH”) for an evidentiary hearing.

On August 26, 2021, OAH mailed a Notice of Scheduling Conference along with Remote Scheduling Conference Instructions to Mr. Gainer and the State, notifying the parties that a video scheduling conference would be held on September 10, 2021, at 9:30 a.m. via the WebEx platform. The notice was not returned as undeliverable by the United States Postal Service (United States mail).¹ OAH did not receive any request for postponement from Mr. Gainer.

On September 10, 2021, the scheduling conference was convened at 9:32 a.m. The administrative prosecutor appeared via WebEx on behalf of the State. After waiting fifteen minutes past the scheduled time for the Scheduling Conference, the ALJ held the Scheduling Conference in Mr. Gainer’s absence.

¹ The notices and correspondences to Mr. Gainer were sent to an address provided by Mr. Gainer in a correspondence sent by Mr. Gainer and received by the Board on July 29, 2021.

On September 10, 2021, a Scheduling Order was issued, scheduling the Telephone Prehearing Conference for October 4, 2021, at 9:30 a.m., via WebEx. The Scheduling Order notified the parties of the date and time of the Prehearing Conference and directed that the parties submit a prehearing statement including a list of witnesses and exhibits and any prehearing motions by September 17, 2021. The Scheduling Order was emailed to Mr. Gainer's email address that he had been using to correspond with the Board in August 2021.²

Also, on September 10, 2021, OAH sent to Mr. Gainer, via United States mail, a Notice of Remote Prehearing Conference. The notice informed the parties of the date and time of the hearing and also enclosed Remote Prehearing Conference Instructions directing each party to prepare and submit a prehearing statement and a list of witnesses and exhibits in advance of the prehearing conference and instructed the parties how to access the WebEx platform instructions. The Notice stated that the Prehearing Conference would take place via WebEx on October 4, 2021, at 9:30 a.m., and that failure to appear or give timely notice of inability to appear for the telephone prehearing conference may result in a decision against the party. The Notice was not returned to OAH as undeliverable by the United States mail.

Also, on September 10, 2021, the State requested discovery from Mr. Gainer. On September 17, 2021, the State submitted a Prehearing Conference Statement. Mr. Gainer did not produce any documents in response to the State's discovery request, and did not submit a prehearing conference statement to OAH.

On October 4, 2021, at 9:30 a.m., the ALJ convened the Prehearing Conference as scheduled. After waiting fifteen minutes, past the start time, the ALJ concluded that Mr. Gainer

² The Board emailed Mr. Gainer at the email address on record on August 20, 2021 as part of the settlement communication and received an email from Mr. Gainer from that email address confirming receipt later that day.

had adequate notice and failed to attend. The State moved for a proposed default order against Mr. Gainer.

Under OAH's rules of procedure, "[i]f, after receiving proper notice in Regulation .05C of this chapter, a party fails to attend or participate, either personally or through a representative, in a prehearing conference, hearing, or other stage of a proceeding, the ALJ 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. The method of giving notice under regulation .05C includes notice "sent to the parties by United States mail." COMAR 28.02.01.05C.

On October 5, 2021, the ALJ issued a Proposed Default Order. The ALJ found that Mr. Gainer had proper notice of the October 4, 2021 prehearing conference and that he failed to attend or participate in the prehearing conference. The ALJ proposed that the Panel find Mr. Gainer in default, adopt as findings of fact the statements set out in the allegations of fact section of the charging document, conclude as a matter of law that Mr. Gainer violated Health Occ. §§ 14-5F-29 and 14-5F-30 in the manner set forth in the charges, and recommended that the Panel impose a fine.

Also, on October 5, 2021, the ALJ mailed copies of the Proposed Default Order to Mr. Gainer, the administrative prosecutor, and the Board, and sent copies to the parties' email addresses. The Proposed Default Order notified the parties that they may file written exceptions to the proposed order but must do so within 15 days of the date of the Proposed Default Order. The Proposed Default Order stated that any exceptions and request for a hearing must be sent to the Board with attention to the Board's Executive Director. Mr. Gainer did not file exceptions.

On December 1, 2021, this case came before Disciplinary Panel A (“Panel A”) of the Board for final disposition.

FINDINGS OF FACT

Because Panel A concludes that Mr. Gainer has defaulted, the following findings of fact are adopted from the allegations of fact set forth in the May 24, 2021 Charges Under the Maryland Naturopathic Medicine Act and are deemed proven by the preponderance of the evidence:

The Respondent has never been licensed to practice naturopathic medicine in the State of Maryland. On or about July 23, 2019, the Board received an investigative report from a detective with the Maryland police department (the “Detective”)³ describing that, among other things, the Respondent had represented himself as a naturopathic doctor and used “N.D.” after his name.

The Detective’s report explained that an individual (“Individual A”) paid the Respondent \$1,500 for “non-linear diagnostic system” treatments, but the Respondent did not provide those treatments as agreed. The Detective’s report also explained that during an interview with the Detective, the Respondent told the Detective that he had graduated from an institute of “original medicine” and was “an N.D., a doctor of natural [*sic*] medicine.” The Respondent then offered to use the “non-linear diagnostic system” on the Detective. The results, according to the Detective, “were in the form of ludicrously poor graphics,” with “bogus bar graphs with red and blue lines.” The Respondent told the Detective that he had “bronchitis, tapeworms, and ‘more bad bacteria than good in his pancreas.’”

The Board opened an investigation based on the information contained in the Detective’s report. As part of its investigation, Board staff spoke to Individual A by telephone on or about

³ For confidentiality and privacy purposes, the names of witnesses, patients, providers, facilities, and other institutions are not disclosed in this Default Order.

September 4, 2019. Individual A told Board staff that he had worked out his disputes with the Respondent and did not want to be interviewed under oath.

During the call, Individual A confirmed to Board staff that the Respondent introduced himself as a “naturopathic doctor” and described a device that could alleviate Individual A’s knee problems. Individual A said that the Respondent could not afford the device and asked Individual A to pay \$1,500 for it in exchange for treatments using the device. Individual A said that he also paid an additional \$450 to the Respondent but they had an agreement for the Respondent to repay him that amount. Individual A also said that the Respondent worked with a collaborating physician (“Physician A”).

As part of its investigation, the Board identified a former business partner of the Respondent (“Individual B”). Board staff interviewed Individual B under oath on or about September 30, 2019. Individual B said that the Respondent identified himself as “Dr. Frank E. Gainer, N.D.” and as a naturopathic doctor. Individual B explained that he helped the Respondent set up a company to provide health services (“Company A”).

Individual B told Board staff that the Respondent treated Individual B and some of Individual B’s family members. Individual B explained that the Respondent used a “negative energy machine,” a “Chi machine,” and a “ULS machine” as treatments. According to Individual B, the Respondent charged \$200 per hour of treatment and \$700 per month of treatments.

As part of its investigation, the Board obtained copies of lease documents regarding Company A from an executive office suites company in Maryland. The Office Application for Company A listed “Dr. Frank E. Gainer, N.D.” as the company’s “Key Officer.” The Respondent also sent the leasing company a business description for Company A that stated, in part, that “Dr. Frank E. Gainer, N.D. . . . has over 14 (fourteen) years of experience providing

health care and general wellness collectively.” On or about May 2, 2019, the Respondent signed an office lease agreement as “Dr. Frank E. Gainer, N.D.”

As part of its investigation, the Board obtained incorporation documents for another company that the Respondent filed with the State on or about October 3, 2019 (“Company B”). Company B’s Articles of Incorporation listed “Frank E. Gainer, N.D.” and Physician A as the only corporate directors. The stated purpose of the company was, in part, to “provide Naturopathic Medicine . . . via various health care professionals with emphasis on prevention and wellness of the total person” As part of its investigation, the Board also obtained email correspondence between a property manager and the Respondent. The emails showed that the Respondent used the email address “dr.gainer@[Company B].com.”

As part of its investigation, Board staff accessed a website maintained for Company B on or about February 12, 2020. Company B’s website listed the Respondent as “Frank Gainer, ND.” A description of the Respondent said, “Original Medicine[.] Over thirty (30) years in the technology area. Began biohacking using computers and other hitech [*sic*] devices to maintain health and improve performance.”

Company B’s website also described services that the Respondent provided, including “Herbal Medicine,” “Natural Pain Relief,” and “Homeopathy.” Under a section titled “Natural Pain Relief,” the website stated that, among other things, “We specialize in non-narcotic practices in healing pain such as headaches, chronic pain, joint pain, and back pain. We use an array of proven methods such as trigger point injections, chiropractic care, and rehabilitation.” Under a section titled “Homeopathy,” the website stated that “Homeopathy treatments [are] to locate the root of your health issues and reverse them naturally. Homeopathy can treat many chronic and acute diseases, rather than managing or suppressing them. Our doctors are able to provide a deeper healing of mental, emotional, and physical complaints.”

As part of its investigation, Board staff interviewed Physician A under oath on or about May 21, 2020. Physician A stated that she completed her residency training in physical medicine and rehabilitation and was board-certified in that specialty, though that certification lapsed in 2016. Physician A said that Individual B first introduced her to the Respondent. The Respondent told Physician A at that time that he was a “naturopathic doctor and got his Degree.” Physician A also said that Company B’s website was “very misleading” because she did not see patients at Company B. Physician A acknowledged that she referred a patient to the Respondent at Company B for a “superficial NOF diagnostic,” which she described as “an energy test, you look at the frequency that’s going on in his body, in his aura.”

CONCLUSIONS OF LAW

Panel A finds Mr. Gainer in default based upon his failure to attend or participate at the Office of Administrative Hearings for the prehearing conference scheduled for October 4, 2021. *See* State Gov’t § 10-210(4). Based upon the foregoing findings of fact, Panel A concludes that Mr. Gainer is guilty of practicing naturopathic medicine without a license, in violation of Health Occ. §§ 14-5F-29 and misrepresenting himself as a practitioner of naturopathic medicine, in violation of Health Occ. § 14-5F-30.

SANCTION

Panel A imposes a fine of \$50,000.

ORDER

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

ORDERED that, within **TWO YEARS**, **Frank Edward Gainer** shall pay a civil fine of **\$50,000**. The Payment shall be by money order or bank certified check made payable to the

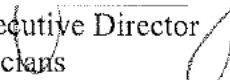
Maryland Board of Physicians and mailed to P.O. Box 37217, Baltimore, Maryland 21297; and it is further

ORDERED that this Default Order goes into effect upon the signature of the Executive Director of the Board. The Executive Director signs the Default Order on behalf of the disciplinary panel; and it is further

ORDERED that this is a public document.

12/27/2021
Date

Signature on File

Christine A. Farrelly, Executive Director
Maryland Board of Physicians 

NOTICE OF RIGHT TO PETITION FOR JUDICIAL REVIEW

Pursuant to Md. Code Ann., Health Occ. § 14-5F-23(a), Mr. Gainer has the right to seek judicial review of this Order of Default. Any petition for judicial review shall be filed within thirty (30) days from the date of mailing of this Order of Default. The cover letter accompanying this Order indicates the date the decision is mailed. Any petition for judicial review shall be made as provided for in the Administrative Procedure Act, Md. Code Ann., State Gov't § 10-222 and Title 7, Chapter 200 of the Maryland Rules of Procedure.

If Mr. Gainer 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**