

IN THE MATTER OF
DAVID A. HOXIE, M.D.
Applicant

* BEFORE THE
* MARYLAND STATE BOARD
* OF PHYSICIANS
* Board Case Number 2011-0643

* * * * *

FINAL DECISION AND ORDER

Background

On December 14, 2010, Applicant David A. Hoxie, M.D. filed an Application for Initial Medical Licensure with the Maryland State Board of Physicians (the “Board”). In the application, Dr. Hoxie acknowledged that he had medical licenses revoked in both Ohio and Virginia and that he did not have an active medical license. In 2004, the State Medical Board of Ohio (“Ohio Board”) permanently revoked Dr. Hoxie’s license. The Ohio Board found that he falsely represented his criminal history on his application to the Ohio Board for his license to practice medicine and on an application to the U.S. Drug Enforcement Agency (“DEA”) for his registration to prescribe controlled dangerous substances. Also in 2004, the DEA revoked Dr. Hoxie’s registration. The DEA found that he filed two false DEA registration applications and two false State professional licensure applications (Ohio and Virginia) and that he was not forthright with a DEA investigator nor in a letter to the agency. In 2006, the Commonwealth of Virginia Department of Health Professionals (“Virginia Board”) revoked his license because a state licensure board (the Ohio Board) had taken an action against his license and because he had committed a criminal act—the illegal processing of drug documents—for which he pled guilty and was convicted in Ohio in 2004.

On September 14, 2012, the Board issued a Notice of Intent to Deny License under the Maryland Medical Practice Act¹ (“Notice of Intent”). The Notice of Intent is based upon § 14-205(a)(1)(iii)² and § 14-307(b) of the Health Occupations Article (2009 Repl. Vol.).

Section 14-205(a) reads, in pertinent part:

(1) In addition to the powers set forth elsewhere in this title, the Board may:

* * *

(iii) Subject to the Administrative Procedure Act, deny a license to an applicant . . . for any of the reasons that are grounds for action under § 14-404 of this title.

The Notice of Intent states that the § 14-205(a)(1)(iii) grounds for action were under § 14-404(a)(21), which provides:

(a) Subject to the hearing provisions of § 14-405 of this subtitle, the Board, on the affirmative vote of a majority of the quorum, 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 state or 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.

The following provisions of § 14-404(a) were listed as the underlying grounds for the § 14-404(a)(21) charge:

(1) Fraudulently or deceptively obtains or attempts to obtain a license for the applicant or licensee or for another;

(3) Is guilty of: . . . (ii) Unprofessional conduct in the practice of medicine;

¹ The Maryland Medical Practice Act is codified under §§ 14-101—14-702 of the Health Occupations Article, Annotated Code of Maryland.

² In 2013, § 14-205 added a new subsection (a) and everything in the section was revised accordingly. Thus, former subsection (a) became (b). Thus, since 2013, § 14-205(a)(1)(iii) has been § 14-205(b)(1)(iii). To be consistent, this order refers to the provision when the notice was issued, § 14-205(a)(iii).

(33) Fails to cooperate with a lawful investigation conducted by the Board; [and]

(36) Willfully makes a false representation when seeking or making application for licensure or any other application related to the practice of medicine[.]

Section 14-307 reads, in pertinent part:

(a) To qualify for a license, an applicant shall be an individual who meets the requirements of this section.

(b) The applicant shall be of good moral character.

The Board forwarded the matter to the Office of Administrative Hearings (“OAH”) for a proposed decision. On April 6, 2013, the State filed a Motion for Summary Decision with OAH. Dr. Hoxie filed a response. On May 16, 2013, the Administrative Law Judge (“ALJ”) held a hearing on the State’s motion.

On June 17, 2013, the ALJ issued a Proposed Ruling on the State’s Motion for Summary Decision, recommending the denial of Dr. Hoxie’s application based upon the revocation of his licenses in Ohio and Virginia and the revocation of his DEA registration.

Dr. Hoxie filed exceptions with the Board arguing that he was improperly prevented from arguing that Ohio and Virginia incorrectly revoked his licenses and that the ALJ improperly prevented him from disputing the allegation that he lacked good moral character.

The Board ruled that, although the Board had authority to deny his application based solely upon the Ohio and Virginia revocations, there still should be an evidentiary hearing held on his moral character and on whether the Board should grant him a license, notwithstanding the revocations. The Board agreed with the ALJ, however, that Dr. Hoxie was not allowed to collaterally attack the revocations by the Ohio and Virginia boards and the DEA. The Board remanded the case back to OAH for a full evidentiary hearing consistent with its findings.

Dr. Hoxie and the State then requested that they be allowed to bypass the OAH evidentiary hearing and have the Board hear the entire matter. Based upon this request, the Board gave the parties the option of bypassing the evidentiary hearing at OAH if they stipulated to a complete evidentiary record. The State and Dr. Hoxie did so. They stipulated to 20 findings of fact and 37 exhibits. The stipulated findings of fact are as follows:

1. Dr. Hoxie graduated from medical school in 1993 in the District of Columbia, and in July 1994, completed on year of a residency in general surgery in a New York hospital.

2. Dr. Hoxie was licensed to practice medicine in Ohio in September 1996. On or about July 15, 2004, the Ohio Board permanently revoked his medical license.

3. The Ohio Board found that Dr. Hoxie falsely denied having “ever been arrested for possession of marijuana, for possession of PCP or being under the influence of PCP,” and he further falsely denied that he had “ever been on probation for any criminal charge, granted any kind of diversion related to any criminal charge, and/or convicted of any crime, no matter how trivial.” This led the Ohio Board to find as a conclusion of law that he failed “to cooperate in an investigation by the Board” in violation of Ohio law.

4. The Ohio Board also found that Dr. Hoxie falsely answered “no” to questions involving his criminal history such as convictions, guilty findings, pleas of nolo contendere and/or plea bargaining on his application to practice medicine in Ohio and on his application for registration to the DEA.

5. In July 2004, the DEA revoked Dr. Hoxie’s certificate of registration and ordered that any pending applications to renew or modify the registration be denied.

6. The DEA specifically found that Dr. Hoxie “falsified two DEA applications, two State professional licensing applications and was not forthright regarding his arrests or

conviction in a discussion with a DEA investigator or in a subsequent letter to the agency.” The DEA revoked the Applicant’s DEA certificate.

7. Dr. Hoxie was licensed to practice medicine in Virginia in November 1995. In October 2006, the Virginia Board denied his petition for reinstatement of his license and revoked his license for disciplinary reasons including that a state licensing board had taken action against his license and that he had committed a criminal act.

8. Presently, Dr. Hoxie is not licensed to practice medicine in any state.

9. On or about December 14, 2010, Dr. Hoxie submitted to the Maryland Board an Application for Initial Medical Licensure.

10. Dr. Hoxie answered “yes” to the following questions under #17 on his Application:

...

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

c. Has any licensing board or disciplinary board in any jurisdiction (including Maryland), or comparable body in the armed services, filed any Complaints or charges against you or investigated you for any reason?

...

g. Have you committed a criminal act to which you pled guilty or nolo contendere or for which you were convicted or received probation before judgment?

11. Dr. Hoxie resides at 401 Carona Place, Silver Spring, Maryland 20905-7452. He is 60 years old, married, and he father of five children. He is a graduate of the University of California at Los Angeles (UCLA) and Howard University College of Medicine.

12. Dr. Hoxie has been a resident and citizen of Maryland since December 2006 when he and his family moved to Easton in Talbot County. Dr. Hoxie registered to vote in Talbot County in December 2007. When he moved to Silver Spring in July 2013, he registered to vote in Montgomery County. Dr. Hoxie has a Maryland driver's license, which is further evidence of his Maryland residence.

13. During the year 2010, Dr. Hoxie prepared for the SPEX or Special Purpose Examination, which is equivalent to a recertification examination for physicians who have been out of practice for an extended period of time. He took and passed the SPEX on his first attempt in 2010. The SPEX is an exam developed by the Post-Licensure Assessment System, a collaborative initiative established in 1998 by the Federation of State Medical Boards and the National Board of Medical Examiners. The SPEX is a computerized, multiple-choice examination of current knowledge deemed requisite for the general, undifferentiated practice of medicine and is used by state medical boards to evaluate a physician's ongoing level of general medical knowledge.

14. Dr. Hoxie has not practiced medicine while he has been a citizen of Maryland, nor has he attempted to practice medicine during this time.

15. Dr. Hoxie became active with the Eastern Shore Writer's Association ("ESWA") beginning in 2007. Through associations made in the ESWA, he contributed to various community activities in Talbot County between 2007 and 2013.

16. In 2008, Dr. Hoxie organized a Playwright Workshop in association with the Hugh Gregory Gallagher Motivational Theatre ("HGGMT") and the late Carlton Spitzer. The Motivational Theatre was established to raise public awareness of physical, developmental, and mental disabilities; and racial, religious, sexual and other forms of discrimination and hate

through dramatic, powerful, insightful, and entertaining stage presentations. (Hugh Gregory Gallagher was a biographer to President Franklin Delano Roosevelt, and a lifelong disability advocate.) In addition to dramatist work, Dr. Hoxie coordinated outreach and scheduled meeting and activities for the workshop. His submission of “Angels in the Midst” earned a second place or first runner up award in the HGGMT Excellence in Writing Award Contest.

17. Between 2008 and 2012, Dr. Hoxie volunteered with “Operation Christmas” in Easton on the grounds of the Talbot County Volunteer Fire Department. This annual event, presented jointly with Dorchester County and Caroline County, serves over 1,000 persons, giving them free Christmas dinners. Other Christmas giveaways include toys, clothing, non-perishable foods, and other holiday goodies for the disadvantaged. His tasks included serving food, moving clothes and gifts from donor sites to tables, and whatever else was needed.

18. Starting in 2009, Dr. Hoxie participated in Live Playwright Society (“LPS”) reading and presentations in support of other writers and playwriting activities in the general Eastern Shore of Maryland. His LPS-related activities were encouraged by several colleagues in ESWA and the Playwright Workshop who urged him to write about his medical experiences.

19. In the summer of 2011, Dr. Hoxie volunteered for the Avalon Foundation at its annual Multicultural Festival. He also volunteered with organizing the artist presentations database for the Easton Plein Air Festival, reportedly the largest and most prestigious juried plein air painting competition in the United States, also sponsored by the Avalon Foundation. Founded in 1994 and located in Easton, the Avalon Foundation, Inc. is a 501(c)(3) charitable organization that began as a community theatre and has grown into the largest arts organization on the Eastern Shore of Maryland.

20. Six of Dr. Hoxie's friends and acquaintances have attested to his character in letters which accompany these proposed Stipulations. The letter writers include: James P. Barayasarra, Ph.D., of Easton, MD; (Ms.) Bruce Marjorie Jones of Vienna, MD; Constance J. Linderman of St. Michaels, MD; Frances G.H. Mason of Easton, MD; Elinor Buck of Tilghman, MD; and attorney Asantewa Olatunji of Los Angeles, CA.

JOINT EXHIBITS

The parties also stipulated to: 1) the admissibility of Joint Exhibits marked (1) through (3[7])³ and 2) that the Joint Exhibits may be considered by the Board in reaching its Final Decision and Order.

On October 23, 2014, six days before the scheduled hearing, Dr. Hoxie submitted a pre-hearing memorandum with two new exhibits attached. The Board had not ordered the parties to file a pre-hearing memorandum, and Dr. Hoxie did not request that he be allowed to file one. Dr. Hoxie's pre-hearing memorandum included procedural history, factual background, and legal analysis sections. The legal analysis section mostly consisted of his description of several board cases. Except for the legal analysis section, the State objected to the memorandum and attachments. Except for the legal analysis section, the Board has not considered the pre-hearing memorandum or the new exhibits.

On October 29, 2014, based upon the stipulations, the Board heard argument from Dr. Hoxie and the State.

FINDINGS OF FACT

The Board accepts as findings of fact stipulated paragraphs 1 through 20. To the extent that the Conclusions of Law contain facts not specified in the stipulations, those facts are based

³ The stipulation mistakenly referred to 39 exhibits. There are 37 exhibits.

upon information in the joint exhibits and are factual findings of the Board. The factual findings were proven by the preponderance of the evidence.

CONCLUSIONS OF LAW

The Board denies Dr. Hoxie's application under both § 14-205(a)(1)(iii) and § 14-307(b).

Health Occ. § 14-205(a)(1)(iii)

Under § 14-205(a)(1)(iii) of the Health Occupations Article, the Board may deny a license to an applicant for any of the reasons that are grounds for action under § 14-404. Under § 14-404(a)(21), the Board may take action when a physician is disciplined by a licensing or disciplinary authority or convicted or disciplined by a court of any state or country for an act that would be grounds for disciplinary action under § 14-404.

Dr. Hoxie stipulated that his medical licenses in Ohio and Virginia were revoked. The Ohio Board found that he intentionally misrepresented his criminal history. The Virginia Board revoked his license as a reciprocal action regarding the Ohio board action and also on Dr. Hoxie's commission of a criminal act, which was based on his guilty plea in 2006 in the State of Ohio Court of Common Pleas for the illegal processing of drug documents.

The following provisions of § 14-404(a) were listed as the underlying grounds for this Board's § 14-404(a)(21) allegation:

- (1) Fraudulently or deceptively obtains or attempts to obtain a license for the applicant or licensee or for another;
- (3) Is guilty of: . . . (ii) Unprofessional conduct in the practice of medicine;
- (33) Fails to cooperate with a lawful investigation conducted by the Board; [and]
- (36) Willfully makes a false representation when seeking or making application for licensure or any other application related to the practice of medicine[.]

The grounds under which the medical boards of Ohio and Virginia took action would be grounds for action in Maryland under § 14-404(a)(1), (3)(ii), (33), and (36). Thus, although not required to do so, the Board could, through § 14-404(a)(21), deny Dr. Hoxie's application under § 14-205(a)(1)(iii).

Dr. Hoxie relies upon several cases involving Board decisions. Dr. Hoxie appears to argue that the conduct in each the cases he cites was more egregious than in Dr. Hoxie's case. But, even if that were the case, that does not offer a sufficient basis for granting Dr. Hoxie a license. In each of the cases he cites, the Board either revoked the physician's license or denied the physician's licensure application.

Underlying the Ohio Board's permanent revocation of Dr. Hoxie's medical license were his representations regarding his criminal history that the Ohio Board found untruthful. The Board does not take such findings lightly. *See Maryland Board of Physicians v. Elliott*, 170 Md. App. 369, 412-23 (2006) (Board denied reinstatement application because applicant misrepresented information in his application). It is vital that physicians are honest in their professional activities, which includes applying for a medical license. The Board denies Dr. Hoxie's application for a medical license under §14-205(a)(1)(iii).

Health Occ. § 14-307(b)

To obtain a medical license an applicant must be of good moral character. Health Occ. § 14-307(b). Dr. Hoxie has provided abundant information concerning his life in Maryland. He has engaged in several artistic pursuits, which, no doubt, have positively contributed to the community. But, it is beyond question that good moral character involves truthfulness and candor, and it has been shown that Dr. Hoxie's truthfulness and candor, notwithstanding his contributions to the community, are lacking.

Dr. Hoxie was found by the Ohio Board to have intentionally misrepresented his criminal history. That matter was fully litigated and was resolved unfavorably to Dr. Hoxie. As explained in the Court of Appeals of Ohio, the documentary evidence demonstrating the untruthfulness of Dr. Hoxie's representations was extensive. As the court found,

. . . , Dr. Hoxie himself added to the reliability of the records. He verified all of the significant identifying information contained within the documents, including his name, physical description, social security number, birth date, address, and car.

. . . , for the most part, these records are self-explanatory. They include multiple pages of detailed, handwritten narrative by the arresting officers, lab reports, diagrams, and detailed, corroborating notations concerning [Dr. Hoxie's] criminal history. The August 7, 1983 report, for example, is eight pages long, with a completed one-page breathalyzer test checklist attached. It includes a three-and-a-half-page narrative concerning the arrest, [Dr. Hoxie's] actions and statements, and the names and serial numbers of the officers involved. Given such detail, [Dr. Hoxie's] blanket assertion of unreliability is inaccurate.

The conduct that Dr. Hoxie engaged in involved significant deception. Dr. Hoxie has not acknowledged any misrepresentations on his part and with that has made no attempt to correct the lack of truthfulness and lack of candor that led to the revocations. The Board cannot find that his lack of truthfulness and lack of candor do not persist. The Board finds that Dr. Hoxie has demonstrated a lack of good moral character. Because of a lack of good moral character, Dr. Hoxie does not possess a necessary qualification for licensure, necessitating denial of his application. *See* Health Occ. § 14-307(b).

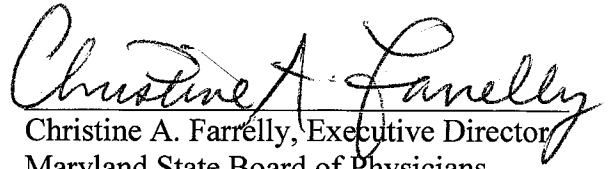
ORDER

It is hereby, by an affirmative vote of a majority of a quorum of the Board, hereby

ORDERED that David. A. Hoxie, M.D.'s application for initial medical licensure in Maryland is **DENIED**; and it is further

ORDERED that this is a public document.

2/26/2015
Date


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

NOTICE OF APPEAL RIGHTS

Pursuant to § 14-408(a) of the Health Occupations Article, Dr. Hoxie has the right to seek judicial review of this Final Decision and Order. Any petition for judicial review must be filed within 30 days from the date this Final Decision and Order 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 Dr. Hoxie petitions for judicial review, the Board is a party and should be served with the court's process. In addition, Dr. Hoxie 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.