The names of two Complainants in the following Final Decision and Order and its attachment, Exhibit 1, have been redacted by the Board. The first Complainant in this matter is referred to as "C-1," and the second Complainant is referred to as "C-2."

IN THE MATTER OF	*	BEFORE THE
SHAWN M. LOPER	*	MARYLAND STATE BOARD
Respondent	*	OF PHYSICIANS
(Unlicensed)	*	Board Case Number 2012-0422

* * * * * * * * * * * * *

FINAL DECISION AND ORDER

On September 27, 2012, the Maryland State Board of Physicians (the "Board") charged Shawn M. Loper with practicing medicine without a license, *see* Md. Code Ann., Health Occ. § 14-601, and with falsely representing that he was authorized to practice medicine, *see* Health Occ. § 14-602(a). On December 4, 2012, the Board issued amended charges, adding factual allegations to the charges.

On January 10-11, 2013, an evidentiary hearing was held at the Office of Administrative Hearings before an Administrative Law Judge ("ALJ"). On April 12, 2013, the ALJ issued a proposed decision finding that Mr. Loper violated § 14-601 and § 14-602(a) of the Health Occupations Article and, as a sanction, recommended a civil fine of $10,000, that the Board issue of a cease and desist order, and that the Board order Dr. Loper to submit to the Board certain items that Mr. Loper possessed that falsely identified him as a physician.

On May 2, 2013, the Board received a letter, dated April 28, 2013, from Mr. Loper.[1] The Board considers this letter to be Mr. Loper's exceptions to the ALJ's proposed decision. The State, represented by an administrative prosecutor, filed a response to Mr. Loper's exceptions. On August 28, 2013, the Board heard oral argument on Mr. Loper's exceptions. Mr. Loper

[1] Although the letter was sent to the Board, it states, "I'm requesting a hearing from the [B]oard of Nursing, and would like to appeal the decision from GBMC."

appeared before the Board and was not represented by an attorney. The administrative prosecutor appeared on behalf of the State.

FINDINGS OF FACT

The Board adopts the Stipulations, the ALJ's Findings of Fact, and the ALJ's Discussion, which are set forth in the ALJ's Proposed Decision on pages 5 – 38. The Stipulations, Findings of Fact, and Discussion are incorporated by reference into the body of this document as if set forth in full. The ALJ's proposed decision is attached as **Exhibit 1.**

Mr. Loper is not a physician and never graduated from or attended medical school. Mr. Loper has never obtained a license to practice medicine from the Board or from any other licensing entity or agency. Mr. Loper, however, has repeatedly falsely represented that he is a practicing physician, specifically an anesthesiologist, and has repeatedly presented himself as Dr. Shawn Loper and Shawn Loper, M.D. And further, while falsely representing himself as a physician, Mr. Loper has practiced medicine in Maryland.

Mr. Loper was initially certified as a Certified Nursing Assistant in 2007, and he renewed that certification, but on August 7, 2012, the Maryland Board of Nursing summarily suspended his license to practice as a Certified Nursing Assistant.

In January 2011, Mr. Loper met **C-1.** Mr. Loper told **C-1** that he was an anesthesiologist and that he had graduated from Temple University School of Medicine. **C-1** also saw that Mr. Loper had a doctor's lab coat with his name and "M.D." embroidered on it and that he had a University of Maryland identification badge with his picture and Shawn Loper, M.D., Anesthesiologist, printed on it.

Mr. Loper asked **C-1** to enter into the daycare business with him. As part of their daycare venture, **C-1** provided Mr. Loper with $1500.

In late March 2011, Mr. Loper and C-1 were driving on I-695 and saw that an accident had occurred. A car had driven off the highway and was lodged between two trees. A registered nurse was attending to the accident victim. Mr. Loper, however, identified himself as a physician, and the registered nurse stopped what she was doing and allowed Mr. Loper to assess the individual. Mr. Loper got a stethoscope out of the truck of his car and then used the stethoscope to assess the individual. Mr. Loper also asked the individual medical questions.

When emergency medical technicians ("EMTs") arrived, Mr. Loper identified himself to them as an anesthesiologist from Shock Trauma (of the University of Maryland Medical Center) and told them that the individual was fine. The EMTs disagreed with Mr. Loper's assessment and decided to have the individual taken to Shock Trauma. The EMTs asked Mr. Loper to help by calling Shock Trauma to make arrangements, but Mr. Loper declined and said that he thought that the EMTs should handle the arrangements. Mr. Loper and C-1 left shortly thereafter.

Eventually, the relations between C-1 and Mr. Loper disintegrated, and C-1 demanded that Mr. Loper return the $1500 that she had provided him. Mr. Loper did not return the money to C-1 , and this resulted in an altercation between C-1 and Mr. Loper. On July 17, 2011, based upon this altercation, C-1 filed criminal assault charges against Mr. Loper in Baltimore City. The trial was scheduled for September 2, 2011, in the District Court of Maryland for Baltimore City.

Shortly after the charges were filed, Mr. Loper appeared at the Office of the State's Attorney for Baltimore City, at 1400 E. North Avenue, wearing a physician's lab coat which had "Dr. Shawn Loper" embroidered on it. Mr. Loper spoke with Assistant State's Attorney Ernest Reitz. Mr. Loper told Mr. Reitz that the charges against him were fabricated and that the charges

were interfering with his career as a physician. Mr. Reitz referred Mr. Loper to the Office of the Public Defender for assistance. Mr. Loper contacted the Office of the Public Defender. Immediately thereafter, Angela Shelton, a supervising attorney at the Office of the Public Defender, based upon the information supplied from Mr. Loper, called the Office of the State's Attorney. Ms. Shelton spoke with Assistant State's Attorney Julie Drake. Ms. Shelton asked that the charges against Mr. Loper be dismissed because "he is supposed to sit for his boards on Monday [July 25, 2011], but will not be able to, based on the fact that his case is open." (Email, from Julie Drake, to Ernest Reitz, July 19, 2011.)

The criminal assault charge against Mr. Loper was assigned to Assistant State's Attorney Jennifer Hamer. Ms. Hamer noticed that the trial date had been moved forward based upon a letter written to the Court by Mr. Loper. The letter stated that Mr. Loper wanted the court date advanced because he is an "anesthesiologist" and that the case was interfering with his medical practice. (Email from Jennifer Hamer to J. Matteo, DHMH, January 4, 2012.)

Ms. Hamer asked the Board whether Mr. Loper was a physician, and the Board notified Ms. Hamer that Mr. Loper was not licensed in Maryland by the Board. Ms. Hamer also contacted the Maryland Board of Nursing, which told Ms. Hamer that Mr. Loper was a Certified Nursing Assistant.

The criminal assault case against Mr. Loper proceeded to a hearing at the District Court of Maryland for Baltimore City, North Avenue, and Ms. Hamer notified the presiding judge, the Honorable Gregory Sampson, that Mr. Loper had asked for the case to be expedited on the false representation that he was a physician. **C-1** told Judge Sampson that Mr. Loper was not a physician. Judge Sampson asked Mr. Loper several questions about his professional background. In response to Judge Sampson's questions, Mr. Loper told Judge Sampson that he

was a "medical doctor," that he was an anesthesiologist, that he was practicing at the University of Maryland Hospital, that he graduated from Temple University School of Medicine, and that he had completed a residency. Mr. Loper also told Judge Sampson that the criminal charge was interfering with his medical career. Mr. Loper did not have an attorney representing him, and, after Judge Sampson suggested that he attempt to obtain an attorney, Mr. Loper asked for a postponement so that he could obtain legal representation. Judge Sampson granted the postponement and told Mr. Loper to bring to the next court hearing documentation showing that he is a physician.

Approximately two weeks later, at the rescheduled court hearing, Mr. Loper returned to District Court and appeared again before Judge Sampson with an attorney representing him. Mr. Loper did not, however, bring with him any documentation showing that he was a physician. Mr. Loper instead brought two textbooks on anesthesiology, a paystub from the University of Maryland from 2005 (the paystub did not indicate that he was a physician), and two framed certificates for continuing education. The case was then moved from the District Court to the Circuit Court for a jury trial. Ultimately, the circuit court entered *nolle prosequi* on the charges. Also, the record of the charges was expunged by court order.

In January 2012, Mr. Loper was working as a security officer at a store in the Towson Town Center Mall. While working, he had a conversation with **C-2.** **C-2** is a Baltimore County Police Officer. Mr. Loper was wearing a jacket with Maryland State Trooper markings. Mr. Loper told **C-2** that he was an off-duty Maryland State Trooper. Mr. Loper was not a Maryland State Trooper. Shortly thereafter, Mr. Loper and **C-2** began dating.

Mr. Loper told C-2 that he was an anesthesiologist, who had worked for Johns Hopkins Hospital, but a woman had ruined his career. He also told her that he was going to take recertification examinations to resume his medical career. According to C-2 , Mr. Loper possessed medical textbooks; a stethoscope; a doctor's lab coat with "M.D., Anesthesiologist," and "JHH" embroidered on it; and a two piece identification with his name, his photograph, and "Anesthesiologist" printed on it. Around April 12, 2012, Mr. Loper told C-2 that he had been accepted as an anesthesiologist at GBMC. On one occasion, Mr. Loper met C-2 outside of GBMC, and Mr. Loper was wearing hospital scrubs and a GBMC identification tag that had his name printed followed by M.D. and anesthesiologist. Also, according to C-2 , when meeting other people, Mr. Loper told them that he was an anesthesiologist working for GBMC and that he had graduated from Temple University School of Medicine.

At the end of May or early June 2012, the relationship between C-2 and Mr. Loper ended acrimoniously. Later, while researching Mr. Loper on the internet pursuant to a civil action against him, C-2 saw that the Board had taken an action against him for practicing medicine without a license. C-2 then contacted the Board and told the Board about Mr. Loper's improper conduct.

EXCEPTIONS

The ALJ's findings in the proposed decision, finding that Mr. Loper practiced medicine without a license and that he falsely represented that he was authorized to practice medicine, were largely based upon credibility determinations. The ALJ found that the eyewitnesses for the State – C-1 , C-2 , Ms. Hamer, and Judge Sampson – were credible, while Mr. Loper was not. Mr. Loper filed exceptions. Mr. Loper's exceptions appear to contest the ALJ's credibility determinations.

The most serious finding against Mr. Loper is that he practiced medicine without a license while at the scene of the car accident on I-695. **C-1** testified in detail about this incident. Mr. Loper denied that this incident occurred. The credibility of Mr. Loper, however, was severely impaired by the testimony of Judge Sampson, Ms. Hamer, and the email of Ms. Drake.

Judge Sampson and Ms. Hamer each testified that Mr. Loper represented in court that he was a physician. They each also testified that Mr. Loper was asked to produce documentation, for the next court hearing, proving that he was a physician. And they each testified that Mr. Loper brought several items to court, and that these items did not show that he was a physician. Judge Sampson's testimony and Ms. Hamer's testimony were corroborated by an email that was sent by Assistant State's Attorney Julie Drake to Assistant State's Attorney Ernest Reitz, which references Mr. Loper's efforts to dismiss the charges based upon the representation that "he is supposed to sit for his boards." There is no doubt that Mr. Loper falsely represented to Judge Sampson at court that he was a physician. As a result of Mr. Loper's false statements to Judge Sampson, the Board does not give Mr. Loper's testimony much weight.

In terms of **C-1's** testimony, the ALJ found her credible. Buttressing **C-1's** credibility is the testimony of Judge Sampson and Ms. Hamer. As stated before, Judge Sampson and Ms. Hamer both testified that Mr. Loper represented himself as a physician in court. This brazen misrepresentation supports **C-1's** testimony that Mr. Loper misrepresented himself at the accident scene. The fact that Mr. Loper would falsely represent that he was a physician to Judge Sampson in court bolsters **C-1's** testimony that he falsely represented that he was a physician to the EMTs and others at the accident scene. With this in mind, it is not surprising that **C-2** testified that Mr. Loper also represented to her that he was an anesthesiologist.

And two others, Mr. Reitz and C-2 , saw that Mr. Loper had a physician's lab coat with embroidery indicating that he was a physician, which further corroborates C-1's testimony, because C-1 testified that Mr. Loper had a physician's lab coat with embroidery indicating that he was a physician.

In addressing Mr. Loper's assertion that C-1's demeanor indicated deception, the ALJ noted that C-1's demeanor was consistent with the material she was covering and was not indicative of deception. The ALJ addressed the details of C-1's testimony and found her explanations reasonable and convincing and consistent with the documentary evidence. The Board finds no reason to reject the ALJ's credibility determination of C-1. The Board finds that C-1's testimony was plausible, sound, and credible.

The Board also accepts the ALJ's determination that Mr. Loper's actions at the scene of the accident constitute practicing medicine. *See* Health Occ. § 14-101(*l*) (2009 Repl. Vol.). In stating to the EMTs that the individual in the car accident was fine, Mr. Loper made a significant medical determination (a diagnosis) meant to affect whether the patient would receive further medical treatment, and if not that, then certainly how expeditious the further treatment would be provided. Mr. Loper also improperly assessed the car accident individual. Mr. Loper's actions are far different from an unlicensed individual who does his or her best to provide needed medical help at an emergency scene when a licensed health care professional is not present. Mr. Loper assessed the individual and offered his medical judgment while pretending to be a physician. By pretending to be a physician, he meant to convey a level of authority and expertise that he did not possess in order to influence the decisions of those at the scene, such as the EMTs, the registered nurse who was already tending to the individual, and the patient himself. For example, the patient may not have allowed Mr. Loper to treat him if the patient was not

given the impression that Mr. Loper was a physician. At the scene of the accident, Mr. Loper practiced medicine without a license while having no authority to do so.

CONCLUSIONS OF LAW

The Board concludes that Mr. Loper practiced medicine and offered to practice medicine in Maryland without a medical license from the Board, in violation of § 14-601 of the Health Occupations Article, and that Mr. Loper falsely represented that he was authorized to practice medicine, in violation of § 14-602(a) of the Health Occupations Article.

SANCTION

The ALJ recommended a civil fine of $10,000. The ALJ also recommended that the Board order the following:

1. that Mr. Loper shall cease and desist from the practice of medicine without a license,

2. that Mr. Loper shall remove all online entries identifying himself as a physician,

3. that Mr. Loper shall submit to the Board all identification badges, laboratory coats, diplomas, certificates, and any other items which state "Shawn Loper, M.D." or "Shawn Loper, Anesthesiologist" or in any way identify Mr. Loper as a physician or having a medical degree.

4. that Mr. Loper shall surrender to the Board all syringes, needles, medical equipment used for intubation, fentanyl patches, cholecystein, and any and all other prescription medications which have not been prescribed for Mr. Loper which he has in his possession,

5. that if, within two years from the date of the Board's Order, Mr. Loper is employed by a health care facility in Maryland, including, but not limited to, any hospital, nursing home, medical office, clinic, dialysis center, or similar health care facility, he shall

provide a copy of the Board's Final Order to his employer and shall submit to the Board written confirmation of having provided notification to the employer.

Mr. Loper did not take exception to the ALJ's recommended sanctions.

Section 14-606(a)(4) of the Health Occupations Article (2009 Repl. Vol.) states, in pertinent part, "a person who violates § 14-601 of this subtitle is: . . . (ii) Subject to a civil fine of not more than $50,000 to be levied by the Board." Under COMAR 10.32.02.06B(3), factors in determining the amount of the civil fine include, but, are not limited to, (a) the extent to which the respondent derived financial benefit from the improper conduct, (b) the willfulness of the improper conduct, and (c) the extent of actual or potential public harm caused by the improper conduct. COMAR 10.32.02.06B(4) provides that the civil fine for the first violation is a minimum of $1000 and a maximum of $30,000.

The Board has carefully considered the factors of COMAR 10.32.02.06B(3) and has determined that the appropriate civil fine is $10,000. The civil fine that the Board has imposed against Mr. Loper is based upon his unlicensed practice of medicine. *See* Health Occ. § 14-606(a)(4)(ii). As indicated above, the most serious incident involves Mr. Loper's unlicensed practice of medicine while at the scene of the car accident on I-695. While Mr. Loper derived no financial benefit, his willfulness was extraordinary and the potential for harm was substantial.

The Board agrees with the ALJ that a cease and desist order is warranted. *See* Health Occ. § 14-206(e). And as part of the cease and desist order, the Board also agrees with the ALJ that Mr. Loper shall be ordered to submit to the Board the items that he has used to misrepresent himself, among the other measures that the ALJ has recommended as necessary to safeguard the public.

ORDER

It is hereby

ORDERED that, within six months of the date of this Final Decision and Order, Mr. Loper shall pay a civil fine of $10,000. The $10,000 must be paid with a bank certified check or money order, which shall be made payable to the Maryland Board of Physicians, and which shall be addressed to the Maryland Board of Physicians, P.O. Box 37217, Baltimore, Maryland 21297; and it is further

ORDERED Mr. Loper shall immediately cease and desist from the unlicensed practice of medicine, and, within one month of the date of this Final Decision and Order, Mr. Loper must:

1. take all actions reasonably possible to remove all online entries which identify him as a physician, an anesthesiologist, a specialist in pain management, and which use "M.D." in connection with his name;

2. submit to the Board, at 4201 Patterson Avenue, Fourth Floor, Baltimore, Maryland 21215 the following:

A. all identification badges, laboratory coats, diplomas, certificates and any other items which state "Shawn Loper, M.D." or "Shawn Loper, Anesthesiologist" or in any way identify Mr. Loper as being a physician or having a medical degree; and

B. all syringes, needles, medical equipment used for intubation, fentanyl patches, cholecystein, and any and all other prescription medications which have not been prescribed for Mr. Loper which he has in his possession; and

3. if, within the next two years from the date of this Final Decision and Order, Mr. Loper is employed by a health care facility in Maryland, including but, not limited to any hospital, nursing home, medical office, clinic, dialysis center, or similar health care facility, Mr.

Loper shall provide a copy of this Final Decision and Order to his employer and shall submit to the Board written confirmation of having provided notification to the employer; and it is further

ORDERED that this is a public order.

12/17/2013
Date

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

NOTICE OF APPEAL RIGHTS

Pursuant to section 14-408(a) of the Health Occupations Article (2013 Supp.), Mr. Loper 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 date of the cover letter to this Final Decision and Order indicates the date that this Final Decision and Order was 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 Mr. Loper petitions for judicial review, the Board is a party and should be served with the court's process. In addition, Mr. Loper 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 prosecutors are not involved in the circuit court process and do not need to be served or copied on pleadings filed in circuit court.

MARYLAND STATE BOARD OF	* BEFORE KIMBERLY A. FARRELL,
PHYSICIANS	* AN ADMINISTRATIVE LAW JUDGE
v.	* OF THE MARYLAND OFFICE
SEAN M. LOPER,	* OF ADMINISTRATIVE HEARINGS
RESPONDENT	* OAH NO.: DHMH-SBP-70-12-44303
LICENSE No.: Unlicensed	*

* * * * * * * * * * * * * *

PROPOSED DECISION

STATEMENT OF THE CASE
ISSUES
SUMMARY OF THE EVIDENCE
STIPULATIONS
FINDINGS OF FACT
DISCUSSION
CONCLUSIONS OF LAW
PROPOSED DISPOSITION

STATEMENT OF THE CASE

On September 27, 2012, the Maryland State Board of Physicians (Board) issued charges against Shawn M. Loper, (Respondent) for alleged violations of the Maryland Medical Practice Act. Md. Code Ann., Health Occ. (HO) §§ 14-206(e), 14-301, 14-601, 14-602(a) (2009). The Board forwarded the charges to the Office of the Attorney General for prosecution. On November 13, 2012, the Board forwarded the matter to the Office of Administrative Hearings (OAH) for a hearing. The delegation of authority directs that the administrative law judge (ALJ) assigned to the case issue proposed findings of fact, proposed conclusions of law, and recommendations.

The Board issued amended charges dated December 4, 2012. The amended charges did not alter the original charges brought against the Respondent, but did add new allegations of fact in support of the charges.

EXHIBIT 1

On January 4, 2013, the State filed a written Motion to Compel Discovery or in the Alternative Motion in Limine to exclude Respondent's Witnesses. Because the Motion was filed so close to the hearing date, I took up the Motion at the merits hearing. The Respondent filed no written response. I allowed him to argue on the Motion at the beginning of the hearing. I excluded the testimony of the one witness the Respondent intended to offer, Ms. Renee Pitts. I dealt with the documents offered as exhibits by the Respondent on an item by item basis rather than issuing a blanket ruling. No written ruling was issued on the Motion.[1] No other written motions were filed in this case.

I held a hearing on January 10 and 11, 2013, at the OAH located at 11101 Gilroy Road in Hunt Valley, Maryland. Md. Code Ann., Health Occ. § 14-405(a) (2009). The Respondent represented himself; Janet Brown, Assistant Attorney General and administrative prosecutor, represented the State of Maryland (State). At the conclusion of the hearing I offered the parties ten days to submit proposed orders. I received a submission from the State. I did not receive any proposed order from the Respondent. I closed the record.

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 §§ 10-201 through 10-226 (2009 & Supp. 2012); Code of Maryland Regulations (COMAR) 10.32.02; COMAR 28.02.01.

ISSUES

1. Did the Respondent practice medicine, attempt to practice medicine, or offer to practice medicine in the State of Maryland without having the required license from the Board in violation of HO § 14-601?

[1] The delegation of authority for this case specifies that this proposed decision must include a listing of "all written motions filed, all written responses thereto, and any ruling made." Memorandum, November 13, 2012 (in the OAH file).

2. Did the Respondent represent to the public, by description of services, methods, or procedures or otherwise, that he was authorized to practice medicine in the State when he was in fact, not authorized to practice medicine in violation of HO §14-602(a)?

3. If the Respondent violated any of these statutes, what, if any, sanction is appropriate?

SUMMARY OF THE EVIDENCE

Exhibits

I admitted the following exhibits on behalf of the State, unless otherwise noted:

Bd. Ex. 1 – Complaint form with attachments, Maryland Board of Nursing, dated December 14, 2011;
Bd. Ex. 2 – Documents obtained pursuant to a subpoena, Maryland Board of Nursing:
A. Application for Nursing Assistant Certification, dated March 16, 2007
B. Electronic mail from Julie Drake to Ernest Reitz, dated July 19, 2011 and Electronic mail from Ernest Reitz to James Matteo, dated December 15, 2011
C. Electronic mail from Jennifer Hamer to James Matteo, Maryland Board of Nursing, January 4, 2012;
Bd. Ex. 3 – Correspondence from Maryland Board of Physicians to Respondent, with subpoena, dated April 24, 2012;
Bd. Ex. 4 – Correspondence from University of Maryland Medical System to Maryland Board of Physicians, with subpoena, dated April 24, 2012;
Bd. Ex. 5 – Correspondence from University of Maryland Medical System to Maryland Board Physicians, dated May 2, 2012;
Bd. Ex. 6 – Docket entry from Maryland Judiciary Case Search, District Court of Maryland for Howard County, dated June 16, 2012;
Bd. Ex. 7 – Computer printout from website for Maryland Board of Nursing, dated February 15, 2012;
Bd. Ex. 8 – Computer printout from website for Caring for Other People, Inc., dated June 1, 2012;
Bd. Ex. 9 – Not admitted;[2]
Bd. Ex. 10 – Not admitted;
Bd. Ex. 11 – Not admitted;
Bd. Ex. 12 – Not admitted;
Bd. Ex. 13 – Report of Investigation, Maryland Board of Physicians, dated August 6, 2012;
Bd. Ex. 14 – Order for Summary Suspension of Certified Nursing Assistant Certification and Notice of Charges, Maryland Board of Nursing, dated August 7, 2012;
Bd. Ex. 15 – Amended Investigation Report, Maryland Board of Physicians, dated November 5, 2012;
Bd. Ex. 16 – Memo from the Greater Baltimore Medical Center to Kimberly Edwards, with employment file attached, dated October 26, 2012;

[2] The State's exhibits were submitted in a tabbed and indexed notebook. The exhibits that were not admitted were left in the notebook as originally tabbed and indexed.

Bd. Ex. 17 – Electronic mail from the Greater Baltimore Medical Center to Kimberly Edwards, dated November 1, 2012;
Bd. Ex. 18 – Charges under Maryland Medical Practice Act, Maryland Board of Physicians, dated September 27, 2012;
Bd. Ex. 19 – Amended Charges under the Maryland Medical Practice Act, Maryland Board of Physicians, dated December 4, 2012;
Bd. Ex. 20 – Facilities Identification List, Office of Administrative Hearings;
Bd. Ex. 21 – Subpoena for Employment Records, Maryland Board of Physicians to Sinai Hospital, dated November 20, 2012;
Bd. Ex. 22 – Response to subpoena from Maryland Board of Physicians to Howard County General Hospital, with attached Employment Record, dated December 14, 2012;
Bd. Ex. 23 – Printout from Maryland Judiciary Case Search, District Court of Maryland for Baltimore City, dated July 17, 2011;
Bd. Ex. 24 – Not admitted;
Bd. Ex. 25 – Letter from GBMC to Respondent, dated September 5, 2012; and
Bd. Ex. 26 – Electronic mail between **C-2** and Respondent, dated June 29, 2012.

I admitted the following exhibits on behalf of the Respondent, unless otherwise noted:[3]

Resp. Ex. 1 – Case Information, District Court of Maryland for Howard County, dated April 15, 2011;
Resp. Ex. 2 – Application for Statement of Charges, District Court of Maryland for Baltimore City, dated July 17, 2011;
Resp. Ex. 3 – Cover Sheet and Pages of Receipts, District Court of Maryland for Howard County Complaint, dated April 7, 2011;
Resp. Ex. 4 – Sender's Application for Recall of Mail, United States Postal Service, dated September 23, 2011; and
Resp. Ex. 5 – Not admitted.[4]

Testimony

The State presented the following witnesses:

- **C-1**;
- Jennifer Hamer, Assistant State's Attorney, State's Attorney's Office for Baltimore City;
- **C-2**;
- The Honorable Gregory Sampson, District Court Judge, District Court of Maryland for Baltimore City; and

[3] The Respondent delivered a packet of material to the OAH on Wednesday, December 12, 2012. At the time, it appeared that the Respondent intended to use the documents as evidence for the merits hearing. The Respondent never asked to have the packet or its constituent parts marked for identification or entered as evidence. The packet is with the file. Subsequently, the Respondent delivered to the OAH a three-ring binder containing numerous pages of documents. Again, it seemed as if the Respondent intended to use the binder's contents as evidence, but he never asked to have the binder marked or admitted and did not refer to it in his presentation. It remains with the file.
[4] Respondent's exhibit #5 was marked for identification. It is in the OAH file along with the four exhibits that were admitted on the Respondent's behalf.

- Kimberly Edwards, Education & Training Coordinator, Board of Physicians.

The Respondent testified on his own behalf.

STIPULATIONS

The parties stipulated to the following facts:

1. The Respondent has not graduated from a medical school.

2. The Respondent was initially licensed in Maryland as a Certified Nursing Assistant (CNA) on May 8, 2007. The Respondent last renewed his CNA license on September 26, 2011, which will expire on September 28, 2013.

3. On August 7, 2012, the Maryland Board of Nursing issued an Order for Summary Suspension of Certified Nursing Assistant Certificate and Notice of Charges and offered the Respondent an opportunity for a show cause hearing.

4. On August 28, 2012, the Respondent appeared before the Board of Nursing for a show cause hearing.

5. On or about August 29, 2012, the Board of Nursing notified the Respondent that the Board of Nursing voted to continue the summary suspension and informed the Respondent of his right to a hearing.

6. On September 10, 2012, the Respondent notified the Board of Nursing in writing of his request for a hearing.

7. To date, the hearing has not been scheduled.[5]

[5] This statement was true at the time of the Prehearing Conference and at the close of the merits hearing at OAH. It is possible that a date has been set in the meantime.

FINDINGS OF FACT

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

The Respondent is not a doctor

1. The Respondent has never been a licensed physician in the State of Maryland or in any other jurisdiction or location.

Events witnessed by **C-1** *, occurring while she and the Respondent were business partners, or triggered by her relationship with the Respondent*

2. Towards the end of February 2011, the Respondent had a chance meeting with **C-1** [6] as **C-1** was walking to a restaurant in Washington, D.C. **C-1** was not interested in striking up a conversation with a stranger on the street and initially she resisted the Respondent's attempts at conversation. Eventually, however, they were talking to each other and it came out that **C-1** is a registered nurse (RN). The Respondent introduced himself as a doctor – specifically, as an anesthesiologist at Shock Trauma.[7]

3. The Respondent ended up joining **C-1** and her party at a restaurant. During the course of that evening, the Respondent talked about physiology and medical matters, and about being an anesthesiologist.

4. The Respondent asked to see **C-1** the next day. They met and at that time the Respondent proposed a business venture wherein he, **C-1** , and a third person, Renee Pitts (Pitts), would open a daycare center. The Respondent represented that he already had two daycare centers operating and that this would be his third.

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[6] Despite the fact that the Respondent had known **C-1** for a significant amount of time when the hearing occurred at OAH, he did not know how to correctly pronounce her last name. The Respondent was advised several times during the course of the hearing how to correctly say it, but was unwilling or unable to adjust and irritated the witness throughout his cross-examination by saying her name often and incorrectly.

[7] Shock Trauma is a reference to the Shock Trauma Center at the University of Maryland Medical Center in Baltimore, Maryland.

5. The Respondent indicated that he would provide most of the financing, but he did obtain $1,500.00 from C-1 to put towards the business.

6. At least partly because of the business proposal, C-1 and the Respondent spent quite a bit of time together, usually meeting two or three times per week in different settings, including at the Respondent's apartment. Over time, the Respondent told C-1 that he had a biology degree from Seton Hall and a medical degree from Temple University, and he displayed diplomas purporting to show these educational credentials.

7. The Respondent would discuss with C-1 medical procedures, such as epidurals, that he represented he performed as an anesthesiologist. He also stated that he was working in a pain management clinic.

8. The Respondent told C-1 he had given fentanyl patches to a woman who had been present at the restaurant the first night that he and C-1 met so that the woman could give them to her mother.[8]

9. The Respondent showed C-1 a University of Maryland hospital identification badge with his picture and "Sean Loper, M.D., Anesthesiologist" on it.

10. The Respondent also had a lab coat of the type doctors commonly wear, which had embroidered on it his name and "M.D."

11. The Respondent had cardio-pulmonary resuscitation equipment in his home.

12. The Respondent also kept a large duffle bag with emergency medical equipment, medications, and first-aid supplies.

[8] Fentanyl is a pain killing medication, a narcotic, which can be administered by the application of a patch containing the medication to a person's skin.

13. The Respondent frequently discussed with C-1 medical matters, including stories that allegedly represented events at work, encompassing procedures that he said he had performed, descriptions of his patients and their conditions, medications, and other details.

14. The Respondent and C-1 went together to scout out properties for possible use as a daycare center. The Respondent wore a badge identifying him as a doctor, and specifically represented himself as a doctor to at least one property manager.

15. C-1 was concerned that the level of education and sophistication displayed by the Respondent was not consistent with that of a medical doctor. Due to those concerns, C-1 did an online search on Google. It resulted in her finding several entries identifying the Respondent as a medical doctor and as an anesthesiologist.

16. C-1 attended an event with the Respondent and Pitts in New Jersey. On March 27, 2011, they were returning to Maryland from New Jersey. In the late afternoon, they came across a car accident on I-695, the "Baltimore Beltway," a highway circling the City of Baltimore.

17. They stopped at the scene of the accident where they found an elderly male driver in a vehicle that had somehow, in the course of the wreck, become lodged between two trees in a manner such that the entire car was suspended above ground.

18. An RN (not C-1) had stopped and she was tending to the driver. The Respondent got a stethoscope that he often kept with him from the car and approached the victim. The Respondent began assessing the victim, listening to his heart and his lungs, and checking for bowel sounds. He asked questions of the victim. The RN who had been seeing to the victim walked away as did another citizen who had stopped to help.

19. When emergency personnel arrived on the scene, including emergency medical care providers, firefighters, and police, the Respondent told them that the victim was fine. He identified himself to emergency personnel as an anesthesiologist from Shock Trauma.

20. Emergency personnel decided to fly the victim to Shock Trauma by helicopter. They solicited the Respondent's assistance in notifying Shock Trauma and making arrangements for the victim. The Respondent demurred, saying words to the effect that he would let emergency personnel take care of that.

21. Around the same time, a friend of **C-1**'s looked for the Respondent in Board reference material. He was not listed there, but the friend found the Respondent listed as a CNA. The friend shared the information with **C-1**.

22. **C-1** did not immediately tell the Respondent that she knew he was not a physician.

23. **C-1** had conducted research and determined that the Respondent was not operating two daycare facilities as he had represented to her. She decided that she would not enter into a business arrangement with the Respondent to open a day care and she asked and then demanded that he give her $1,500.00 back to her. On March 29, 2011, one of these conversations went particularly badly and **C-1** accused the Respondent of assaulting her.

24. On April 19, 2011, **C-1** filed a complaint about the Respondent with the Maryland Board of Nursing.

25. Eventually **C-1** filed criminal charges over the alleged assault. She believed the relevant events occurred in Baltimore County. After filing criminal charges there, she was advised that the address she had given as the location of the alleged assault was in Baltimore City. The County charges were dismissed and **C-1** re-filed in Baltimore City on July 17, 2011. The trial date was set for September 2, 2011.

26. While the criminal case was pending, the Respondent went to the North Avenue office of the District Court Division of the Baltimore City State's Attorney's Office (SAO) to discuss his case. He appeared sometime in July 2011 in the SAO wearing a doctor's lab coat with "Dr. Shawn Loper" embroidered on it. He represented that the charges filed by **C-1** were fraudulent and that

the existence of the case was interfering with his ability to take examinations that were important to his certification as a physician.

27. SAO personnel referred the Respondent to the Public Defender's Office. The Respondent then went to the Public Defender's Office and made the same representations regarding being a doctor and that he was about to sit for certain certification examinations and that the existence of the charges would keep him from taking the tests.

28. In due course, Jennifer Hamer, Assistant State's Attorney (ASA), was assigned to prosecute the case. Ms. Hamer became aware that the trial date had been moved from September 2, 2011, to an earlier date. In investigating why the date was moved up, she found that the Respondent had written a letter to the Court reiterating that the charges were fraudulent. In the letter, the Respondent stated that he was a doctor - an anesthesiologist - and that the case was interfering with his ability to practice medicine.

29. The SAO contacted the Board, which confirmed that the Respondent was not registered or licensed as a physician in the State of Maryland.

30. When the criminal case came to Court the first time, the ASA advised the Honorable Gregory Sampson, the Judge assigned to the case, that she believed the Respondent had filed a letter with the Court that contained false information.

31. Judge Sampson asked the Respondent if he was a medical doctor and the Respondent said that he was. Judge Sampson then asked what kind of doctor the Respondent was and he stated he was an anesthesiologist. Under further questioning, the Respondent told the Court that he had graduated from Temple University Medical School in 2004 and that he was employed by the University of Maryland Hospital.

32. The case was postponed for the Respondent to obtain an attorney to represent him and Judge Sampson instructed the Respondent to return on the next date with evidence to show that he had graduated from medical school, such as a diploma or transcripts.

33. Before the case came back to Court, the ASA contacted Temple University. Temple University advised that no person with the Respondent's named had ever attended or graduated from that institution including the medical school.

34. The ASA also contacted University of Maryland Hospital. That hospital advised that the Respondent was not on the payroll, and particularly he was not associated with the anesthesiology department.

35. When the case came back to Court, the Respondent appeared with an attorney, but without any of the documentation he was instructed to bring with him. He was given time to send a person to retrieve documentation from his apartment. What he eventually presented to Judge Sampson was two anesthesiology text books, a pay stub from the University of Maryland Hospital from 2005, and two other inconsequential documents.

36. Eventually it was determined that the assault case would be heard by the Circuit Court before a jury. At the Circuit Court level the case was *nol prossed* and the Respondent moved for expungement of all records of the case.

37. **C-1** applied for a Peace Order against the Respondent in Howard County, where she resided at the time. An interim Peace Order was issued, but at the hearing a week later, the Peace Order was denied.

38. **C-1** filed a civil suit against the Respondent to recover her $1,500.00. She obtained a judgment against the Respondent in the amount of $1,500.00. He has not paid the judgment.

39. The Respondent did not send any certified check to **C-1** to attempt to pay her.

40. C-1 refused to meet the Respondent alone at his apartment as he requested. Pitts then contacted C-1 several times, at the Respondent's request, to try to set up a meeting. Pitts admitted that she did not have money to give C-1 , but wanted to meet anyway. C-1 refused to consider meeting with Pitts unless Pitts was going to turn over money.

Events witnesses by C-2 or triggered by her relationship with the Respondent

41. The Respondent worked security for a store in Towson Town Center Mall. In late January 2012, while on duty as a security officer, he struck up a conversation with C-2.

The Respondent was wearing a black windbreaker with markings indicating it belonged to a Maryland State Trooper.

42. The Respondent told C-2 that he was an off-duty Maryland State Trooper. C-2 then shared with the Respondent that she is a Baltimore County Police Officer.

43. They exchanged personal information and the Respondent asked C-2 to come back the next day and see him at the store.

44. Within a couple weeks C-2 and the Respondent began dating.

45. About one week before Valentine's Day 2012, the Respondent told C-2 that he was going to go back into medicine. The Respondent elaborated by telling C-2 that he was an anesthesiologist for Johns Hopkins Hospital (JHH) and that a woman had ruined his career and that that was why he had become a Trooper. He told C-2 that he was studying to take recertification tests necessary to get back into medicine.

46. The conversation took place in the Respondent's apartment. On his kitchen counter, he had a medical device for intubating patients. He also had medical text books in his home. The Respondent also had his stethoscope.

47. Later, the Respondent showed C-2 a doctor's lab coat with his name followed by "M.D., Anesthesiologist" and JHH embroidered on it. He also showed her a two-piece photo identification card with his picture, his name, and "Anesthesiologist" on it.

48. Around April of 2012, the Respondent advised C-2 that he had been accepted as an anesthesiologist at Greater Baltimore Medical Center (GBMC). He advised that he was getting tested for tuberculosis (TB) and starting an orientation program.

49. C-2 went with the Respondent to have the TB test read, but they arrived too late in the day.

50. About a week later, the Respondent called C-2 and asked her to come to GBMC to pick up cash that he had with him. He told her that he did not have a place to lock up the money. When she arrived, he gave her six or seven hundred dollars. The Respondent came out of GBMC and met C-2 at her car, but then asked her to come in to GBMC to talk with him for a few minutes. The Respondent was wearing hospital scrubs that were marked as belonging to GBMC. He was also wearing a GBMC identification tag that had the Respondent's name, followed by "M.D., Anesthesiologist."

51. On another occasion, C-2 saw the Respondent with a large wad of cash in his hand. C-2 asked about the money and the Respondent said he had just cashed his paycheck and that he was holding about $3,500.00 in his hands.

52. On one occasion, when C-2 was hung over, the Respondent offered to give her an IV to help her recover. C-2 declined.

53. The Respondent told C-2 at one point that he intended to administer a birth control medication shot to a person he knew because he and that person did favors back and forth for each other.

54. The Appellant carried needles in his bag or briefcase, describing them as epidural needles.

55. On one occasion, **C-2** was on duty and had taken a person to Northwest Hospital on an emergency petition.[9] The Respondent called and **C-2** explained where she was and that they were waiting for a room for her detainee. The Respondent said he would call and get a room. The Respondent then called the hospital, identifying himself as "Dr. Loper" and also as **C-2's** fiancé. Hospital personnel put **C-2** on the phone with him and he advised **C-2** that he had called, advised them he was a doctor, and instructed them to expedite finding a room for her detainee. Very shortly thereafter, **C-2** was advised that a room was ready for the patient she brought in on the emergency petition.

56. **C-2** and the Respondent were not engaged at the time.

57. The Respondent also made calls to **C-2** while he was working during which she would hear him speaking to patients about how they would feel prior to being put to sleep and how they would feel once they woke up.

58. In May 2012, the Respondent and **C-2** went on a cruise together, paid for by the Respondent. While on the cruise, the Respondent offered to buy about $5,000.00 worth of artwork for **C-2** as a birthday present. The Respondent told **C-2** that his credit rating was not good enough to purchase the artwork outright, but that she should make the purchase and he would reimburse her. **C-2** had the Respondent sign a promissory note.

[9] A petition for emergency evaluation, commonly referred to as an "emergency petition," may be filed by certain authorized persons when there is reason to believe that an individual has a mental disorder and that he or she presents a danger to the life or safety of himself or herself or to the life or safety or others. If the petition is granted, the individual is then taken to a hospital for an evaluation. Often times the individual is transported by police. *See* Md. Code Ann., Health Gen. §10-622 (Supp. 2012).

59. During discussions with the person who sold C-2 and the Respondent the artwork, the Respondent stated that he was an anesthesiologist and that he worked for a hospital. He also told the salesperson that he was going to purchase a daycare facility.

60. The Respondent also told a number of other people that he and C-2 met on the cruise that he was an anesthesiologist. The cruise was not the only time that C-2 heard the Respondent telling other people that he was an anesthesiologist and that he worked at GBMC. She heard him make this statement on numerous other occasions including visits to New Jersey and social events in Maryland. C-2 also heard the Respondent claim to have attended medical school in Philadelphia.

61. Temple University is located in Philadelphia.[10]

62. Immediately after the cruise, C-2 decided not to date the Respondent any longer. They had discussions and disagreement about the outstanding payment for the art from the cruise. C-2 cancelled the order for the artwork, but there was still a substantial penalty fee that was owed. On one occasion, when the Respondent came to C-2's home to try to present her with a post-dated check for a portion of the debt and to collect some of his possessions, he was wearing a doctor's lab coat with GBMC, the Respondent's name, and "Anesthesiologist" embroidered on it.

63. In June 2012, the Respondent purchased a new car.

64. C-2 filed a civil suit against the Respondent to try to recover $1,000.00 of the money she lost in purchasing the artwork and then cancelling the order for it. C-2 was unable to obtain service on the Respondent.

65. To try to find updated information on where to locate the Respondent, C-2 searched the internet. There she found information from the Board indicating that the Board was pursuing action against the Respondent for practicing medicine without a license. This was the first inkling

[10] C-2 was unable to recall the name of the medical school, only that it was located in Philadelphia.

C-2 had that the Respondent was not actually a medical doctor practicing anesthesiology.

C-2 contacted the Board to offer information on the Respondent. She was interviewed shortly thereafter, on October 18, 2012.

Lack of connection between C-1 *and* C-2

66. Prior to the OAH hearing, C-1 and C-2 never met each other or had any contact with each other.

Notice to the Respondent that his CNA license was suspended

67. By letter dated August 7, 2012, the Board of Nursing notified the Respondent that it had summarily suspended his certificate to practice as a CNA effective immediately. The letter advised the Respondent that the Board of Nursing had scheduled a Show Cause hearing for August 28, 2012. As noted in the stipulations above, the Respondent attended the Show Cause hearing. At the show cause hearing, the Respondent was advised that his CNA license remained suspended and that he would hear from them shortly regarding the Board of Nursing's decision. Within a few days, the Respondent was notified that the Board of Nursing was continuing the summary suspension and the Respondent exercised his right to request a hearing.

The Respondent's employment in the health care field in Maryland[11]

68. The Respondent was employed by the University of Maryland Medical System at the James Lawrence Kernan Rehabilitation Hospital between 2005 and 2007 as an anesthesia technician. Prior to that, the Respondent worked or had an internship (or some combination of internship and work) at Shock Trauma. His title for at least part of that time was unit secretary.

[11] The Respondent's resume lists additional positions in the health care field at various facilities in New Jersey. The most recent of these listings was a position that ended in 2003. The New Jersey jobs are not addressed in these Findings of Fact. It is also the case that it is not easy to piece together the Respondent's employment history because he has not been consistent in reporting these dates across various job applications, interviews, and resumes documented in the evidence admitted for this case. In some instances there are records from the employer to assist in pinpointing dates.

69. The Respondent was employed by Sinai Hospital from approximately June 2007 through October 2009, when his employment was terminated by the hospital.

70. From approximately January 2007 through September 2009 the Respondent was employed as a dialysis technician at Davita Dialysis.

71. Around this time, the Respondent worked for Howard County General Hospital, which the Respondent consistently refers to as JHH, because it is part of the JHH system.

72. The Respondent was employed as an anesthesia technician by Saint Agnes Hospital (St. Agnes) between January 2010 and June 11, 2010. While employed at St. Agnes, the Respondent twice was found to have misrepresented himself as an anesthesiologist. Based on these incidents and other problems in the workplace, the Respondent's employment was terminated on June 11, 2010.

73. From May or June 2010 through at least November 2011,[12] but perhaps longer, the Respondent worked for Rosen-Hoffberg Rehabilitation and Pain Management as a medical assistant.

74. The Respondent was employed at GBMC as an emergency room multifunctional technician beginning on or about April 16, 2012. This position required a CNA license. In August 2012, GBMC performed a routine review of CNA licenses with renewal dates in August. On August 28, 2012, GBMC discovered that the Respondent's CNA license was summarily suspended on August 7, 2012. The Respondent did not notify GBMC of the suspension. When directly asked about the status of his license by the Director of the Emergency Department, the Respondent

[12] The Respondent stated on his GBMC application, prepared in early March, 2012, that he was still employed at Rosen-Hoffberg as of the date of the application. The resume that he submitted with the GBMC application indicated that his employment there ended in November 2011.

indicated that there was nothing amiss and nothing he needed to tell GBMC.[13] His employment with GBMC was terminated effective August 30, 2012.

75. The applications the Respondent submitted for these various jobs sometimes contained conflicting information about his post-high school education, i.e. whether he had a biology degree from Seton Hall (as listed on the resume that the Respondent submitted with his application for employment with GBMC, but not on the application itself), some, or no college education. He also sometimes omitted jobs when purporting to give a full listing of previous positions. For example, on his GBMC employment application, he omitted any mention of having been previously employed at St. Agnes. He also did not always accurately relate the reason for leaving a particular position, for example, on his GBMC employment application he stated that he left Sinai because he wanted "to gain more experience," when in fact he left because he was terminated from employment.

DISCUSSION

The legal framework

As a starting point for this discussion, "an individual shall be licensed by the Board before the individual may practice medicine in this State," subject to certain exceptions not relevant here covering emergency medical services providers with proper licenses or certificates. HO § 14-301. Additionally, the HO statute provides that "a person may not practice, attempt to practice, or offer to practice medicine in this State unless licensed by the Board." HO § 14-601. Further, unless authorized to practice medicine, "a person may not represent to the public, by description of services, methods, or procedures, or otherwise, that the person is authorized to practice medicine in this State." HO § 14-602(a).

[13] August 28, 2012, was the day the Respondent attended his show cause hearing at the Board of Nursing. The Respondent was notified by correspondence from the Board of Nursing dated August 7, 2012, that his license was suspended effective immediately and that his show cause was scheduled for August 28, 2012. At the show cause, the Respondent was advised that his summary suspension would remain in effect until further notice. Although it is not clear exactly which date the Respondent first learned his CNA license was suspended, it is clear that he was aware of it before August 28, 2012, his statements to the contrary notwithstanding.

What it means to "practice medicine" is outlined in HO 14-101(n):

Practice medicine. --
(1) "Practice medicine" means to engage, with or without compensation, in medical:
(i) Diagnosis;
(ii) Healing;
(iii) Treatment; or
(iv) Surgery.

(2) "Practice medicine" includes doing, undertaking, professing to do, and attempting any of the following:
(i) Diagnosing, healing, treating, preventing, prescribing for, or removing any physical, mental, or emotional ailment or supposed ailment of an individual:
1. By physical, mental, emotional, or other process that is exercised or invoked by the practitioner, the patient, or both; or
2. By appliance, test, drug, operation, or treatment;
(ii) Ending of a human pregnancy; and
(iii) Performing acupuncture as provided under § 14-504 of this title.

The State's witnesses and their credibility

Credibility determinations are critical in this case. The Respondent maintained that the entire case was the result of vindictive women willing to lie about him and creating problems for him as a result of their own petty jealousies and whims. I do not agree.

The Respondent met **C-1** by chance. He pursued a conversation with her, a stranger on the street, and was charming enough to get past her guard and join her party at a restaurant. **C-1** is an RN. The Respondent identified himself almost from the moment they met as being a Shock Trauma anesthesiologist. He asked to meet with **C-1** the next day and at that meeting he proposed a business deal – opening "another" child care center, with **C-1** and Pitts as business associates. The Respondent and **C-1** began meeting at various locations, often with Pitts, to discuss business. **C-1** indicates that they decided at some point that their relationship would be strictly business. I believe she was more interested in romance with the Respondent than she now wants to admit, but I believe her interest stopped far short of the obsessive, unrequited interest in the Respondent that he tried to portray.

The Respondent played the part of a licensed medical doctor in every possible way. He repeatedly claimed to hold that position. He discussed his work, describing patients, procedures, and medications. He had medical textbooks in his home, as well as medical equipment. He had a standard doctor's lab coat embroidered with his name on it followed by "M.D." He showed C-1 a University of Maryland hospital identification badge with his picture identifying him as a medical doctor, and, more specifically, as an anesthesiologist. He owned a stethoscope which he carried with him to an unusual extent. He had created fake educational credentials which he displayed for C-1. He claimed to have given fentanyl patches directly to somebody for the purpose of that person passing it along to her mother.

C-1 had concerns about the Respondent's lack of couth. Although he was good with medical jargon and lingo, she sometimes wondered if he really was a medical doctor. She searched the internet to see what she would find. She found several different entries describing him as a medical doctor and as an anesthesiologist. It was sufficient to temporarily allay her concerns.

On March 27, 2011, the Respondent and C-1 came upon a serious automobile accident. An elderly motorist was in a car suspended between two trees. An RN had stopped at the scene and was tending to the driver. The Respondent, by his actions, caused that person to leave the motorist and thus instead of receiving medical attention from an RN, the motorist was left in the hands of a CNA. Worse, the Respondent got out his stethoscope, which he had taken to New Jersey, despite the fact that the trip was social in nature. He purported to assess the motorist. He identified himself to emergency services personnel and to police as a medical doctor, an anesthesiologist from Shock Trauma. He also told them the driver was fine. Emergency services personnel did not find the driver to be fine, but rather in need of being flown to Shock Trauma for immediate emergency medical care. Since the Respondent had injected himself into the proceedings, on-scene emergency services personnel asked that the Respondent call Shock Trauma or speak with Shock Trauma to

make the provision of medical services more seamless. At that point the Respondent refused to provide any assistance and left the scene.

It is not clear exactly when C-1 became aware that the Respondent was not a medical doctor. She found out because a friend was digging through internet resources checking on the Respondent. C-1 herself had been looking into the information the Respondent had given her about some child care centers he supposedly owned and had up and running. She found that the Respondent had not been honest or accurate in the information he had given her. She decided that she would not go into business with the Respondent and she began demanding money from him – money she had given him directly as an investment in the child care center, and other money as well. The arguments over the money turned ugly, resulting in C-1 accusing the Respondent of assault. C-1 did not immediately file criminal charges. She did not think that it was necessary at the time.

On April 19, 2011, C-1 filed a complaint with the Board of Nursing. She knew by this time that the Respondent was not a doctor. She began exploring avenues to try to recoup the money she had lost to the Respondent. She spoke to numerous people seeking advice. While she was at a district court location, she spoke with a police officer. That officer advised C-1 to file criminal charges based on her report that the Respondent assaulted her. C-1 filed in Baltimore County. Those charges were dismissed when it was discovered that the location of the offense was in Baltimore City. C-1 re-filed in the city. She also made several other complaints regarding the Respondent to various agencies. For example, she contacted child care regulators over the Respondent's representations and misrepresentation about his child care facilities. The Respondent told C-1 he had applied for a position with the U.S. Marshall's service, so she filed a report with that agency as well as with the Federal Bureau of Investigation.

The criminal case was set for trial in Baltimore City in the ordinary course. While it was pending, the Respondent went to the SAO to complain about **C-1** and to characterize her as vindictive and out-of-line - a type of lovesick stalker filing false charges. He appeared wearing a doctor's lab coat with "Dr. Shawn Loper" embroidered on it. He spoke with ASA Earnest Reitz, a supervisor in the SAO. ASA Reitz was surprised that a doctor would wear a lab coat to the SAO to discuss a case. It was sufficiently unusual that he discussed it with the receptionist at North Avenue and with ASA Hamer immediately after it happened. He referred the Respondent to the Public Defender's Office, located in the same building. While in the SAO, the Respondent stated that he was a doctor.

The Respondent then went to the Public Defender's Office. While there, he repeated his allegations about **C-1** and also repeated his statements about being a medical doctor whose career was being adversely affected by the very fact that criminal charges were pending against him. He advised Public Defender personnel that he was supposed to sit for boards on Monday, July 25, 2011, but could not so long as the case was open. He made these statements on or about July 19, 2011.

The SAO became suspicious of the Respondent's claims and confirmed that the Respondent was not a doctor licensed to practice medicine in Maryland. The SAO also made inquiries and learned that the Respondent had never attended Temple University, much less graduated from its medical school. The Respondent had written to the Court requesting that the trial date be moved up. The letter to the Court included statements that the Respondent was a doctor and that the pending criminal case was detrimental to his practice of medicine. The Court accelerated the trial date at the Respondent's request.

On the first trial date, ASA Hamer brought to Judge Sampson's attention the letter in the Court file, suggesting that some of the claims in the letter were false. Upon direct questioning by

Judge Sampson in open court, the Respondent insisted that he was a licensed medical doctor – that he was in fact an anesthesiologist practicing medicine at University of Maryland hospital. He further represented that he had graduated from Temple University Medical School in 2004. None of these statements were true. Upon reflection, the Respondent decided that he would like to secure an attorney to represent him at trial and the matter was postponed at his request. He returned for the second trial date with an attorney, still insisting that he was a doctor, although he brought no proof of that claim despite instructions from Judge Sampson to bring documents to authenticate his claims. He eventually revised his claim to be that he was a doctor but was not currently practicing medicine. The case was sent to Circuit Court and dismissed at that level. The Respondent promptly took steps to expunge the criminal case, rendering records and the audio recording of the case unavailable.

The Respondent attacked **C-1's** credibility on several grounds. He stated that she had been way too interested in him romantically and that many of her actions were predicated on her disappointment once she realized he was only interested in a business relationship. Both the Respondent and **C-1** testified that they decided at some point that their relationship would be strictly business. I noted above that I think **C-1** initially had more interest in a personal relationship than did the Respondent, but the two of them specifically discussed the type of relationship they would have going forward, and it was to be grounded in business. To that end, **C-1** gave the Respondent money as part of her investment. She met with the Respondent, usually with Pitts present, to discuss aspects of the child care center. They scouted locations together with real estate or property management professionals. They discussed and shopped for furniture for the child care center. They reviewed regulations and requirements for day care facilities. They went to the Department of Labor, Licensing and Regulation to get paperwork to

form an LLC. I do not find credible the Respondent's suggestion that C-1 wanted only to chase him and had no real interest in opening a child care center.

The Respondent also noted his perception that C-1 lacked eye contact when she was testifying before me and was thus not a credible witness. I cannot agree with his assessment on that point. During most of her testimony, C-1 maintained good eye contact. The pace and tone of her testimony, in terms of volume, pitch, and cadence, was consistent with the material she was covering – sometimes slow and smooth, sometimes animated, sometimes aggravated. There were points during cross-examination, when the Respondent had consistently mispronounced her name and she had told him repeatedly how to say it correctly and he was asking questions that were designed to characterize her as a liar, that C-1 testified looking off into the distance. I believe it to have been a very reasonable response to the exasperation she must have felt. I do not believe it was in any way indicative of deception in her testimony.

The Respondent also attacked C-1 as a witness by suggesting that she was essentially going to every courthouse she could find to file various charges against him. As part of this argument he pointed to the fact that she did not file criminal charges until months after the alleged assault occurred. C-1 explained in detail that she did not think it was necessary to file criminal charges but that when she spoke to a police officer about the matter, the officer told her that she should file charges. She filed charges in good faith in Baltimore County, only to have them dismissed because the alleged assault took place in Baltimore City. She re-filed in that jurisdiction. It is not a surprise that the relatively minor assault C-1 reported was dismissed at the Circuit Court level in Baltimore City. I do not take the fact that the charges were *nol prossed* as an indication that the charges were not valid or as some kind of judgment that C-1 was deemed to be lacking in credibility.

The Respondent also had an additional argument regarding the criminal charges. The narrative written out by C-1 clearly stated that "there were no physical injuries sustained" in the assault. RESP #2. The charges included a deadly weapon charge that included the abbreviation "int inj." This stands for "intent to injure"; however, the Respondent believed it to stand for "internal injuries." He believed it was inappropriate for C-1 to say there were no injuries and then charge him with causing internal injuries. The argument is misplaced on a couple of levels. First, the Respondent misunderstood what the abbreviation meant to begin with, and second, even if he had been correct about the interpretation, C-1 is not the person or entity deciding which charges should be included in the criminal case. That function belongs to a court commissioner or to the jurisdiction's SAO. In any event, the argument was not persuasive.

C-1 also filed for a peace order in Howard County, because that is where she resided at the time. The peace order petition was denied. In addition, she filed a civil suit against the Respondent for money damages. That suit was successful and C-1 has an outstanding civil judgment against the Respondent. When viewed in context, the various court proceedings initiated by C-1 are logical and do not support the Respondent's argument that they are proof of a vendetta against him by C-1.

The Respondent also attacked C-1's credibility regarding the amount of money she said she was owed by the Respondent. Although various documents and C-1's testimony contained different numbers, when given the opportunity, C-1 offered credible explanations for why the numbers were different. For example, she was able to cancel some of the items that had been ordered for the day care center, reducing the amount she claimed from the Respondent. Also, the Respondent claimed that C-1 passed up numerous opportunities to get her money back. He claimed that he had set up meetings between Pitts and C-1 but that C-1 failed to show. C-1 , in contrast, testified that the Respondent wanted her to come to his home to meet with him

alone or with Pitts. C-1 no longer felt safe around the Respondent and steadfastly refused to go to his home. She further testified that when Pitts was trying to set up the meetings, Pitts told C-1 that she did not have any money to give her but still wanted to meet. C-1 was not interested in meeting and chatting with Pitts. She just wanted her money back.

The Respondent further testified that he sent C-1 a certified check, but C-1 never picked it up. As proof, the Respondent offered a Sender's Application for Recall of Mail, a United State Postal Service form. RESP #4. The Respondent insisted that the form proved that he sent a certified check. It did not, of course, prove that he sent a check, certified or otherwise, to C-1. It did not prove that the Respondent sent anything to C-1. All it proved was that he filled out a form claiming to have previously sent something to her. He did not offer any copy of the certified check, or the certified check itself, or any postal service records showing any original certified mailing. The argument that C-1 refused to accept the $1,500.00 she has been demanding from the Respondent is ridiculous.

In summary, I found C-1's testimony to be firm and convincing, whereas I found the Respondent's attacks on her to be unpersuasive.

The Respondent also took broad swipes at the credibility of Judge Sampson and ASA Hamer. He stated in argument:

> [Y]ou've got to realize this jurisdiction system...lawyers, prosecution, judges, you know, whoever, they lie as well. The jurisdiction is not perfect....They lie as well. And I feel like...just because you had a Judge and [a prosecutor] come in here to testify don't mean [sic] that they haven't fabricated this story.

Testimony of the Respondent, Transcript page 432. He went on to offer more specific criticism of Ms. Hamer, pointing out that although she testified about the letter the Respondent sent to the Court misrepresenting himself as a physician and seeking a postponement, the letter was never presented as evidence in the OAH hearing. He argued this despite knowing precisely why the letter was

unavailable – because he had filed to have the case expunged, and the records from the expunged case are no longer available. This disingenuous attack did not tarnish Ms. Hamer's credibility.[14]

The Respondent offered no reason why Judge Sampson or ASA Hamer would fabricate anything about him and I reject that notion. Both were credible professionals testifying pursuant to subpoenas. A substantial amount of ASA Hamer's testimony was supported by documents created contemporaneously with the events at issue, such as emails and letters. Further, Judge Sampson's and ASA Hamer's recollections about the events in District Court were nearly identical. It is also significant that the lies offered to the SAO, the Public Defender's Office, and the Court by the Respondent so closely echo the lies he told others, such as C-1 and C-2. The props he used, such as the lab coat, were reported by C-1 and C-2, but also by ASA Hamer. The consistency of the reports from different witnesses, in different settings, with diverse connections to the Respondent leaves no doubt that he was misrepresenting himself as an anesthesiologist, licensed to practice medicine and practicing medicine in Maryland.

Needless to say, the Respondent also attacked C-2's credibility. He referred to her, as he did to C-1 , as a "young lady," a term that was condescending and insulting as used by the Respondent. He also argued that C-2 was not credible because she was too materialistic and that money motivated her to testify against him: "If C-2 would have been paid, she would never have came [sic] forward." Transcript, pg. 430. He is right in that last point, of course. As detailed above, C-2 searched the internet for information on the Respondent because she thought it might provide information to help her get service of process on the Respondent for her civil suit. Although C-2 was skeptical when the Respondent first told her in February 2012 that he was a physician, he convinced her that it was true and she never doubted that proposition until her

[14] Also, of course, Ms. Hamer was a witness in this case, not a party, so no criticism about what evidence she produced or failed to produce on her own would be persuasive. The State was the party prosecuting the Respondent and the State is the party with the burden of proof.

computer searches, fueled by her desire to locate the Respondent, led her to discover the public Board information available on the Respondent. C-2 would never have learned that the Respondent was not truly an anesthesiologist if he had paid for the paintings as he promised to do and as he signed a promissory note stating that he would.

The Respondent also characterized C-2 as jealous. He elicited testimony that she had been deceptive in her interpersonal dealings with the Respondent in that the Respondent was not the only man she was seeing at one time. C-2 and the Respondent had a relationship that was riddled with trust issues. It is ironic that the Respondent seeks to paint C-2 as unreliable due to her admitted misrepresentations during their relationship, while simultaneously failing to acknowledge the overwhelming evidence of the much more pervasive and fundamental untruths he was peddling about himself at the same time, beginning with his career as a State Trooper and ending with his occupation as an anesthesiologist.

I found C-2 to be a rock solid witness. She answered all the questions put to her with great candor, even when the information was not necessarily flattering to herself. One could sense her anger towards the Respondent, but her answers uniformly made sense and her statements and actions seemed logical for a person in her situation. Her voice was steady; her eye contact was good. I recognize that in her position as a police officer she may have more frequent occasions to testify than some witnesses, but her comfort on the stand seemed grounded in the correctness of her testimony rather than in a casualness born of familiarity with the witness stand.

The last witness to consider on the State's side was Ms. Edwards from the SBP. She explained the course of her investigation and described the records that were obtained pursuant to subpoena or other means. The Respondent made much of a misstatement early in Ms. Edwards' testimony where she indicated that the Respondent failed to appear at his show cause hearing before the Board of Nursing, a statement that was inaccurate. She explained that she believed she had read

that but could have been mistaken. The Respondent was also quite critical of the investigation by the SBP. His cross-examination showed that he did not understand the SBP's internal procedures, and much of what he tried to question Ms. Edwards about, for example why she decided to investigate the Respondent, or how she chose the specific charges to be leveled against him, turned out to be decisions she did not make. Ms. Edwards' credibility was not questioned by the Respondent to the same degree as he questioned the veracity of Judge Sampson and ASA Hamer. Her testimony about subpoenaing records and following up on various matters that arose after her initial report to the Board was routine and did not suggest any bias or prejudice against the Respondent.

The Respondent's lack of credibility

For the most part, the Respondent was not credible. He displayed a remarkable tendency to believe that what he wanted to be true was true, despite overwhelming evidence to the contrary. In the face of eyewitness testimony offering detailed descriptions of the Respondent engaging in exactly the acts charged by the Board, the Respondent loudly and frequently complained that the State had offered **no** evidence on the charges against him. He did not believe that any form of hearsay evidence should be permitted or considered,[15] he asserted that no hospital had charged him with practicing medicine without a license, as if this were significant, and he believed that most of the testimony offered through the two days of hearing was totally irrelevant.

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[15] The Administrative Procedure Act provides in pertinent part:

> § 10-213. Evidence
>
> (a) *In general.* -- (1) Each party in a contested case shall offer all of the evidence that the party wishes to have made part of the record.
>
> (2) If the agency has any evidence that the agency wishes to use in adjudicating the contested case, the agency shall make the evidence part of the record.
>
> (b) Probative evidence. -- The presiding officer may admit probative evidence that reasonable and prudent individuals commonly accept in the conduct of their affairs and give probative effect to that evidence.
>
> (c) Hearsay. -- Evidence may not be excluded solely on the basis that it is hearsay.

Md. Code Ann., State Gov't §10-213 (2009).

His general attitude towards candor was demonstrated in his applications for employment at various local hospitals. Job applications called for him to "list all previous employment starting with your most recent position. Account for any time during this period that you were unemployed by stating the nature of your activities." SBP #22. The applications further had statements to the effect that the Respondent understood that any false or misleading statements or omissions could be grounds for rejection as a candidate or termination as an employee. The applications then also contained further language that the applicant was "certifying" that all statements made on the employment application are "true, correct and complete to the best of my knowledge." SBP #22.[16]

Despite unambiguous language requiring full disclosure about his work history, the Appellant would omit previous jobs when filling out applications, or he would offer inaccurate information about why he left, concealing that he had been fired by insinuating that his ambition had propelled him to look for work elsewhere. When being cross-examined on these discrepancies, the Respondent objected and asked, "Is that a crime? I mean, for me not disclosing information to another facility? I mean that was my discretion. GBMC didn't have an issue. I was still hired." Transcript, pg. 354. His complete failure to recognize that it is indeed a problem for him to lie on applications, his insistence that this lack of veracity was completely irrelevant to any issue at the hearing, and his faulty logic in asserting that there was no problem in lying on the application *because he got hired* serve as a window into the Respondent's thought processes.

There are numerous examples of the Respondent's credibility lapses. He stipulated that he did not graduate from a medical school, but brazenly told Judge Sampson that he had graduated from Temple University medical school, going so far as to provide a fake year of graduation. The

[16] The quoted language is from the application for employment at Howard County General Hospital, but all of the employment applications in evidence had similar language. *E.g.*, SBP #21, Application for Employment with Sinai Hospital; SBP #16, Application for Employment with GBMC. Howard County General is a part of the JHH system. There was some confusion during the hearing because the Respondent was using the term JHH to refer to what others were referring to as Howard County General.

Respondent knew that his CNA license was suspended and that a valid license was a requirement for his position at GBMC, yet he did not just fail to inform his then-employer, GBMC, about the problem, he affirmatively lied about the status of his license when directly asked by supervisors.

More examples of the Respondent's lack of credibility are unnecessary to demonstrate why I give little weight to his testimony, and generally find that the other witnesses, individually and as a group are far more credible than he. The Respondent denied all charges. He categorically denied that the incident where he stopped to attend to a motorist ever happened. He noted that if one with his training happened upon an accident that person should stop and render assistance, but he concluded by asserting that **C-1** made up the incident from whole cloth.

How the facts fit with the charges

The Respondent practiced, attempted to practice, or offered to practice medicine without a license

Turning to the charges, the Board first charged the Respondent with practicing medicine, attempting to practice medicine, or offering to practice medicine without a license. The Respondent does not have a license. The Respondent practiced medicine when, on March 27, 2011, he stopped at an accident scene and used a stethoscope and questioning of the motorist to try to assess the motorist's medical state and when he subsequently pronounced the driver fine, identifying himself to police and emergency personnel on the scene as a doctor, specifically an anesthesiologist at a local hospital. The "practice of medicine" encompasses engaging in diagnosis. HO § 14-101(n)(1)(i). The Respondent's charade could easily have cost the motorist his life. The motorist was not fine – he needed to be flown to a trauma center for emergency treatment.

The State alleged that the incident where the Respondent called Northwest Hospital to expedite an admission of **C-2's** detainee qualified as the practice of medicine. While I think the Respondent's action in this instance is a violation under HO § 14-602, discussed below, I do not

believe it constitutes the practice of medicine. The Respondent did not engage in diagnosis, healing, treatment or surgery of the detainee. He also did not undertake or profess to diagnose, heal, treat, prevent, prescribe for, or remove any physical, mental or emotional ailment or supposed ailment by any physical mental emotional or other process or by appliance, test, drug, operation, or treatment. HO § 14-101. The Respondent did not make any decision that the detainee had to be admitted to a hospital; he just called blustering about being a doctor and demanded that they find a room faster. The State's charging document describes the Respondent's actions as "influencing and interfering with the hospital work environment." SBP #19, page 10, paragraph 29. I think that is a fair characterization of what the Respondent did, but I do not see how that fits the definition of practicing medicine.

The Respondent also offered or attempted to practice medicine when he offered to give C-2 an IV to help her recover from a hangover. Similarly, offering or agreeing to give an acquaintance a shot of Depo-provera would be practicing, offering to practice, or attempting to practice medicine. The State argued that providing a fentanyl patch to an individual would constitute the practice of medicine as well. It would, if it actually happened. I am not persuaded by a preponderance of the evidence that the Respondent truly gave any fentanyl patches out; I am persuaded that he bragged about having done so to C-1. I believe her when she says that he told her that he dispensed fentanyl patches. That is a different issue from believing that he was telling her the truth when he said it. Once again, I believe this is part of the HO § 14-602 violation rather than an act falling under HO § 14-601.

The Respondent represented to the public that he was authorized to practice medicine when he was not authorized to do so

Under HO §14-602(a), the Respondent is prohibited from "representing to the public, by description of services, methods, or procedures *or otherwise*" that he was authorized to practice

medicine in the State when he was, in fact, not authorized to do so. HO §14-602(a) (emphasis added). The Respondent violated this provision in many ways. First, he frequently said he was a medical doctor. He had several lab coats which he wore. They had various inscriptions identifying the Respondent by name accompanied by the title "Doctor." Some also had a hospital name on them; some specifically indicated that the Respondent was an anesthesiologist. These lab coats were props that the Respondent used to reinforce his false statements. He went so far as to wear the coat to the courthouse one day to try to trick various agencies – the SAO and the Public Defender's Office – into believing that he was a medical doctor. Eventually the Respondent's arrogance found him standing in a court of law lying directly to a District Court Judge, insisting that he was a licensed doctor, a graduate of Temple and currently employed at University of Maryland Hospital. Not a word of it was true.

The incident involving Northwest Hospital saw the Respondent calling to meddle in the administrative workings of a hospital. His misrepresentations to emergency personnel on the scene of the March 2011 accident was a representation that he was authorized to practice medicine, when, in fact, he was not licensed to do so. Saying he would give an IV to help with a hangover, announcing he would be giving a depo provera shot to an acquaintance, claiming to be giving out fentanyl patches, either faking calls from work or making actual calls and broadcasting real patients' conversations with him while he was on duty, wearing fake identification badges, and manufacturing diplomas to support his falsehoods are all evidence that the Respondent violated HO §14-602(a) in all these actions and in others that he took.

Sanctions

Cease and desist

The Board has the authority to issue a cease and desist order or to obtain injunctive relief against the Respondent for practicing medicine without a license:

§ 14-206. Judicial powers

. . .

(e) Cease and desist orders; injunctions. -- The Board may issue a cease and desist order or obtain injunctive relief for practicing medicine without a license.

HO § 14-206. COMAR 13.32.02.06B(2).[17] In this venue, injunctive relief is not available; the State is seeking a cease and desist order.

There is ample reason for issuing a cease and desist order in this case. The Respondent denies all the relevant conduct, but he argued that even if he had stopped at the accident as asserted by the State, it was only what he had been told and trained to do. He utterly fails (or pretends to fail) to see the difference between stopping and rendering what aid one can in an emergency and arriving on the scene claiming to be a doctor and taking charge of the care of an accident victim when he does not have the training, knowledge, expertise or license to undertake that practice of medicine. He is without remorse, trying to paint himself as a victim of the administrative process and vindictive women. He put the motorist at issue in this case in real danger and it is clear in his reckless denial of the truth about the allegations in this case that he is a threat to others who may come across his path when they are vulnerable.

He fooled C-2 into believing that he was a physician and then offered to give her an IV. The lengths to which the Respondent went to maintain his ruse are telling. He kept books, equipment, and other props in his home. He took C-2 to GBMC to have his TB test read, but they arrived too late. He had her come to GBMC on two other occasions when he was working there, but when he met her he was wearing gear that indicated he was a doctor, rather than his actual position. She was not the first woman he tricked into believing he was a doctor. He is quite

[17] This hearing was held January 10 and 11, 2013. I am using the COMAR regulations that were in effect at the time of the Respondent's activities and at the time of the hearing. The regulations were substantially revised effective January 21, 2013 (40:1 Md. R. 20). All the references in this decision are to the pre-January 2013 regulations.

convincing in his play-acting, and willing to go to great lengths to continue the illusion that he is really a doctor.

Civil penalty

In addition to the cease and desist order, the State is also recommending a civil penalty. The authority for that is found in HO § 14-606(a)(4)(ii):

> § 14-606. Penalties
> (a) Imposition of penalties. –
>
> . . .
>
> (4) Except as provided in paragraph (5) of this subsection, a person who violates § 14-601 of this subtitle is:
> (i) Guilty of a felony and on conviction is subject to a fine not exceeding $ 10,000 or imprisonment not exceeding 5 years or both; and
> (ii) Subject to a civil fine of not more than $ 50,000 to be levied by the Board.
> (5) The provisions of paragraph (4) of this subsection do not apply to a licensee who has failed to renew a license under § 14-316 of this title.
> (b) Disposition of funds. – The Board shall pay any penalty collected under this section into the Board of Physicians Fund.

See also COMAR 10.32.02.06A ("[t]he Board may impose ...a penalty upon any individual who practices medicine without a license.").

A civil fine is appropriate in this case. The cease and desist is intended to protect the public, but in the final analysis, it simply tells the Respondent to stop engaging in activity he was already prohibited from undertaking. A civil penalty represents a real consequence to the Respondent for his repeated, improper actions.

In determining a penalty, the regulations highlighted three specific factors to be considered, but added that the determination was not limited to consideration of only the three that were enumerated. The three listed factors were "(a) the extent to which the respondent derived any financial benefit by the improper conduct; (b) [t]he willfulness of the improper conduct; and (c) [t]he extent of actual or potential public harm caused by the improper conduct." COMAR 13.32.02.06B(3). For a first violation, the penalty ranges from not less than $1,000.00 to not more

than $30,000.00. COMAR 10.32.02.06B(4)(a). The penalties escalate up to the statutory maximum of $50,000.00 for the third offense. The State recommended a penalty of $10,000.00. The Respondent did not derive any financial benefit from practicing medicine without a license in any direct way. It is probably the case the C-1 would not have given him any money to open a child care center had he not seemed credible in claiming he was a medical doctor, but that does not appear to represent the type of financial benefit targeted by the regulations. The discussion above makes abundantly clear the willfulness of the Respondent's conduct. He is not mistaken about some fine point of law; there was not a paperwork snafu that resulted in a licensing delay; he was not lead astray by inaccurate advice from a licensing agency. He is not a doctor, but he consistently and repeatedly says that he is and tries to undertake the responsibilities that accompany that title. The public harm attendant upon his misconduct was discussed above. It is substantial and, frankly, alarming.

The proposed penalty is in the lower end of the penalty range, although still a considerable amount of money.[18] The State pointed to the substantial amounts of cash the Respondent had in hand on at least two occasions, his recent purchase of a new car, his ability to pay not only for a cruise for himself, but also paying C-2's way, and his offer to buy his girlfriend a birthday present worth about $5,000.00 as factors leading to the conclusion that a $10,000.00 penalty is appropriate. The Respondent did not address his financial situation as it might apply to a penalty. His position is that he did nothing wrong and no penalty would be appropriate. He also made clear his intention to ignore any order to pay a fine, "Under no circumstances I'm not paying no $10,000.00 fine; I'm not – I can tell you right now that's not going to happen – and I will fight to the fullest to win this case." Transcript, pg. 429. Considering the extreme willfulness of the

[18] I note that the State related that the Board interprets each instance of misconduct as a violation, and asserted accordingly that the Respondent in this case was not subject to the penalty class for a first violation, but was subject to the penalty range for a third violation, which ranges from $15,000.00 to $50,000.00.

conduct, the potential for public harm, and the Respondent's unwillingness to acknowledge, much less show remorse for his conduct, which I find to be an additional factor that should be taken into consideration, I find that a $10,000.00 penalty is appropriate and I will recommend that the Board include that in its Order.

Other Recommendations

Because the transmittal for this case requires that I make recommendations, and because the State was proposing specific provisions beyond a cease and desist order and a civil penalty, I invited the parties to submit proposed orders. The State filed its recommendations; the Respondent did not. The State's proposal contains a level of detail I will not replicate, such as a payment schedule for the civil penalty.

The other items in the State's submission were touched upon in the State's case at hearing, particularly in the closing argument. The State recommends that the Respondent be ordered to remove "all online entries which identify him as a physician, an anesthesiologist, a specialist in pain management, or which use 'MD' in connection with the Respondent's name." The Respondent took the position during the hearing that there was no proof that he had personally made any entries using these titles or terms. Whether or not the Respondent created or caused the online material to appear, it is reasonable to require him to take all action possible to remove the references that state or suggest that he is a physician. I will recommend that the Board include this in its Order.

The State further recommended that the Respondent be required to submit to the Board all "identification badges, laboratory coats, diplomas, certificates and any other items which state 'Shawn Loper, MD' or 'Shawn Loper, Anesthesiologist' or in any way identify the Respondent as being a physician or having a medical degree. The recommendation is reasonable and I will include it in this proposed decision.

The State also requested a provision requiring that the Respondent surrender to the Board all "syringes, needles, medical equipment used for intubation, fentanyl patches, cholecystein, and any and all other prescription medications which have not been prescribed for [the Respondent]" which he has in his possession. Again, the recommendation is reasonable and I will include it.

Finally, the State recommended a provision reading as follows:

> If within the next two (2) years from the date of [the Board's] Order, Respondent is employed by a health care facility in Maryland, including but not limited to any hospital, nursing home, medical office, clinic, dialysis center, or similar health care facility, Respondent shall provide a copy of the [Board's] Final Order to his employer and shall submit to the Board written confirmation of having provided notification to the employer.

This recommendation is eminently reasonable and, in view of the Respondent's history of failing to fully and accurately fill out employment applications, it is a necessary safeguard for both employers and the patients the Respondent might serve. I will recommend that the Board adopt this requirement.

CONCLUSIONS OF LAW

I conclude that the Respondent did practice medicine, attempt to practice medicine, or offer to practice medicine in the State of Maryland without having the required license from the Board in violation of HO § 14-601.

I further conclude that the Respondent did represent to the public, by description of services, methods, or procedures or otherwise, that he was authorized to practice medicine in the State when he was in fact, not authorized to practice medicine in violation of HO §14-602(a).

I further find that as a consequence of his violation of these statutes, the Respondent is subject to the issuance of a cease and desist order, a civil penalty, and such other conditions as will safeguard the public. HO §§ 14-206 and 14-606(a)(4)(ii); COMAR 10.32.02.06B(2) and 10.32.02.06A.

PROPOSED DISPOSITION

I **PROPOSE** that the charges filed by the Board against the Respondent on September 27, 2012, as amended on December 4, 2012, be **UPHELD**.

I **PROPOSE** the following:

- that the Respondent be ordered to Cease and Desist from practicing medicine without a license;
- that the Respondent be ordered to pay a civil penalty of $10.000.00;
- that the Respondent be ordered to take all action reasonably possible to remove all online entries which identify him as a physician, an anesthesiologist, a specialist in pain management, or which use "MD" in connection with his name;
- that the Respondent be required to submit to the Board all identification badges, laboratory coats, diplomas, certificates and any other items which state "Shawn Loper, MD" or "Shawn Loper, Anesthesiologist" or in any way identify the Respondent as being a physician or having a medical degree;
- that the Respondent surrender to the Board all syringes, needles, medical equipment used for intubation, fentanyl patches, cholecystein, and any and all other prescription medications which have not been prescribed for the Respondent which he has in his possession; and
- that if, within the next two (2) years from the date of the Board's Order, Respondent is employed by a health care facility in Maryland, including but not limited to any hospital, nursing home, medical office, clinic, dialysis center, or

similar health care facility, Respondent shall provide a copy of the Board's Final Order to his employer and shall submit to the Board written confirmation of having provided notification to the employer.

April 12, 2013
Date Decision Mailed

Kimberly A. Farrell
Administrative Law Judge

KAF/kkc
#140472

NOTICE OF RIGHT TO FILE EXCEPTIONS

Any party may file exceptions to this Proposed Decision with the Board of Physicians and request a hearing on the exceptions. The exceptions must be written and be filed within fifteen (15) working days from the date of the proposed order. The exceptions and request for hearing must be addressed to the Board of Physicians, 4201 Patterson Avenue, Baltimore, MD, 21215-2299, Attn: Geneva Goode, Administrative Aide to Supervisor, Compliance Administration. A copy of the exceptions should be mailed to the opposing attorney or to the opposing party if he or she is not represented by an attorney. The opposing party will have fifteen (15) days from the receipt of any written exceptions to file exceptions in response, and to request a hearing on the exceptions, pursuant to correspondence to Geneva Goode, Administrative Aide to Supervisor, Compliance Administration. Md. Code Ann., State Gov't § 10-220 (2009) and COMAR-10.32.02.02F.

The Office of Administrative Hearings is not a party to any review process.

Copies mailed to:

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MARYLAND STATE BOARD OF	*	BEFORE KIMBERLY A. FARRELL,
PHYYSICIANS	*	AN ADMINISTRATIVE LAW JUDGE
v.	*	OF THE MARYLAND OFFICE OF
SEAN LOPER,	*	OF ADMINISTRATIVE HEARINGS
RESPONDENT	*	OAH No.: DHMH-SBP-70-12-44303
LICENSE No.: Unlicensed	*	

* * * * * * * * * * * * * *

FILE EXHIBIT LIST

I admitted the following exhibits on behalf of the State, unless otherwise noted:

Bd. Ex. 1 – Complaint form with attachments, Maryland Board of Nursing, dated December 14, 2011;
Bd. Ex. 2 – Documents obtained pursuant to a subpoena, Maryland Board of Nursing:
A. Application for Nursing Assistant Certification, dated March 16, 2007
B. Electronic mail from Julie Drake to Ernest Reitz, dated July 19, 2011 and Electronic mail from Ernest Reitz to James Matteo, dated December 15, 2011
C. Electronic mail from Jennifer Hamer to James Matteo, Maryland Board of Nursing, January 4, 2012;
Bd. Ex. 3 – Correspondence from Maryland Board of Physicians to Respondent, with subpoena, dated April 24, 2012;
Bd. Ex. 4 – Correspondence from University of Maryland Medical System to Maryland Board of Physicians, with subpoena, dated April 24, 2012;
Bd. Ex. 5 – Correspondence from University of Maryland Medical System to Maryland Board Physicians, dated May 2, 2012;
Bd. Ex. 6 – Docket entry from Maryland Judiciary Case Search, District Court of Maryland for Howard County, dated June 16, 2012;
Bd. Ex. 7 – Computer printout from website for Maryland Board of Nursing, dated February 15, 2012;
Bd. Ex. 8 – Computer printout from website for Caring for Other People, Inc., dated June 1, 2012;
Bd. Ex. 9 – Not admitted;
Bd. Ex. 10 – Not admitted;
Bd. Ex. 11 – Not admitted;
Bd. Ex. 12 – Not admitted;
Bd. Ex. 13 – Report of Investigation, Maryland Board of Physicians, dated August 6, 2012;
Bd. Ex. 14 – Order for Summary Suspension of Certified Nursing Assistant Certification and Notice of Charges, Maryland Board of Nursing, dated August 7, 2012;
Bd. Ex. 15 – Amended Investigation Report, Maryland Board of Physicians, dated November 5, 2012;
Bd. Ex. 16 – Memo from the Greater Baltimore Medical Center to Kimberly Edwards, with employment file attached, dated October 26, 2012;

Bd. Ex. 17 – Electronic mail from the Greater Baltimore Medical Center to Kimberly Edwards, dated November 1, 2012;
Bd. Ex. 18 – Charges under Maryland Medical Practice Act, Maryland Board of Physicians, dated September 27, 2012;
Bd. Ex. 19 – Amended Charges under the Maryland Medical Practice Act, Maryland Board of Physicians, dated December 4, 2012;
Bd. Ex. 20 – Facilities Identification List, Office of Administrative Hearings;
Bd. Ex. 21 – Subpoena for Employment Records, Maryland Board of Physicians to Sinai Hospital, dated November 20, 2012;
Bd. Ex. 22 – Response to subpoena from Maryland Board of Physicians to Howard County General Hospital, with attached Employment Record, dated December 14, 2012;
Bd. Ex. 23 – Printout from Maryland Judiciary Case Search, District Court of Maryland for Baltimore City, dated July 17, 2011;
Bd. Ex. 24 – Not admitted;
Bd. Ex. 25 – Letter from GBMC to Respondent, dated September 5, 2012; and
Bd. Ex. 26 – Electronic mail between **C-2** and Respondent, dated June 29, 2012.

I admitted the following exhibits on behalf of the Respondent, unless otherwise noted:

Resp. Ex. 1 – Case Information, District Court of Maryland for Howard County, dated April 15, 2011;
Resp. Ex. 2 – Application for Statement of Charges, District Court of Maryland for Baltimore City, dated July 17, 2011;
Resp. Ex. 3 – Cover Sheet and Pages of Receipts, District Court of Maryland for Howard County Complaint, dated April 7, 2011;
Resp. Ex. 4 – Sender's Application for Recall of Mail, United States Postal Service, dated September 23, 2011; and
Resp. Ex. 5 – Not admitted.