

IN THE MATTER OF

JOEL S. GANZ, M.D.

Respondent

License No. D01544

*

*

*

*

*

*

*

*

*

*

*

*

*

*

*

*

*

BEFORE THE

MARYLAND STATE

BOARD OF PHYSICIANS

Case No.: 2009-0806

FINAL DECISION AND ORDER

Joel S. Ganz, M.D. was convicted in the United States District Court for the District of Columbia for obstruction of a criminal investigation of a health care offense, under 18 U.S.C. § 1518. The issue before the Maryland State Board of Physicians (the "Board") is whether he was convicted of a crime involving moral turpitude.

I. FINDINGS OF FACT

The Board finds the following facts by a preponderance of evidence:

Dr. Ganz has been licensed to practice medicine in Maryland since 1965. His most recent license has the expiration date of September 30, 2010. During the relevant period, Dr. Ganz also had a license to practice medicine in the District of Columbia.

Beginning in 2002, Dr. Ganz's medical practice included the review of medical files of developmentally disabled residents living in licensed residential group homes in Washington, D.C. His role was to review the medical records of only those residents taking psychotropic medications. He did not review the records of those residents not taking psychotropic medication.

In 2005, the Federal Bureau of Investigation ("FBI") began investigating Dr. Ganz for possible medical billing fraud. The FBI was investigating whether Dr. Ganz improperly submitted bills to Medicaid and received payments for reviewing the medical records of

residents who were not receiving psychotropic medication: the residents whose records he did not review.

In 2007, Dr. Ganz's attorney¹ met with federal investigators and an Assistant United States Attorney ("AUSA") about the possible billing fraud. Dr. Ganz's attorney showed the government officials documents (entitled "Psychotropic Medication Review") purporting to show that Dr. Ganz reviewed the medical records of the residents who were not receiving psychotropic medications. The government officials made copies of the documents.

A few days later, the AUSA asked Dr. Ganz's attorney for the originals, so the documents could undergo a forensic ink analysis. Dr. Ganz's attorney initially agreed but later told the AUSA that he was withdrawing from his representation of Dr. Ganz and would not be keeping the documents he received from Dr. Ganz. The government immediately served the attorney with a subpoena for the documents.

After extensive litigation concerning the attorney's motion to quash, the original documents were produced. The United States Secret Service then conducted the forensic ink analysis and determined that 12 of the 13 records analyzed were created after the dates they were purportedly written. The analysis also found that the writing on all of the documents, claimed to be written over the course of 16 months, came from the same ink. And, more significantly, the analysis found that the documents could not have been written at the time when most of the medical reviews were said to have taken place, between December 2002 and April 2004, because the ink on the documents did not exist before 2004.

¹ This attorney is neither his attorney who represented him in his guilty plea or sentencing nor his attorney representing him in this matter before the Board.

On August 12, 2008, in the United States District Court for the District of Columbia, Dr. Ganz pleaded guilty to the criminal offense of obstruction of a criminal investigation of a health care offense, under 18 U.S.C. § 1518, which reads:

(a) Whoever willfully prevents, obstructs, misleads, delays or attempts to prevent, obstruct, mislead, or delay the communication of information or records relating to a violation of a Federal health care offense to a criminal investigator shall be fined under this title or imprisoned not more than 5 years, or both.

(b) As used in this section the term "criminal investigator" means any individual duly authorized by a department, agency, or armed force of the United States to conduct or engage in investigation for prosecution for violations of health care offenses.

As part of the plea agreement, a "Statement of the Offense" was submitted. Dr. Ganz signed the Statement of the Offense and agreed that it fairly and accurately described his conduct and involvement in the offense to which he pleaded guilty. According to the Statement of the Offense:

Beginning in early 2005 and continuing to the present, he was under investigation for possible fraudulent conduct in billing for psychiatric consultation services regarding RCM residents. Dr. Ganz was aware of the pendency of the investigation by late 2006.

Sometime within the course of the government's investigation of this matter, Dr. Ganz created medical records "documenting" services provided on behalf of Medicaid residents. These records purported to show that Dr. Ganz provided services to the RCM residents who were not on psychotropic medicines. However, these records had been created by Dr. Ganz after the fact so as to render them exculpatory. In the spring of 2007, Dr. Ganz caused these false records to be provided to the FBI and the U.S. Attorney's Office for the District of Columbia in an attempt to cause the investigation to be closed without charges being brought against him.

On January 7, 2009, in *United States of America v. Joel S. Ganz*, Criminal Case No. 1:08-CR-00211 (RMC), in the United States District Court for the District of Columbia, Dr. Ganz was convicted of one count of obstruction of a criminal investigation of a health care offense, under

18 U.S.C. § 1518. He was sentenced to two years probation and ordered to pay a \$10,000 fine and perform 100 hours of community service. The appellate process has been completed and the plea has not been set aside.

On December 10, 2009, under section 14-404(b) of the Health Occupations Article, based upon Dr. Ganz's conviction, the Office of the Attorney General filed with the Board a Petition to Revoke Respondent's Medical License (the "Petition"). The Petition included the relevant certified docket entries. The Petition explained that Dr. Ganz's Maryland medical license must be revoked for his conviction of a crime of moral turpitude. Then on December 14, 2009, the Board issued an Order to Show Cause, requiring Dr. Ganz to respond in writing to the Petition. On February 4, 2010, Dr. Ganz, through his attorney, responded that he did not object to the Petition and admitted that there is sufficient evidence to require the revocation of his license.

II. CONCLUSIONS OF LAW

Section 14-404(b) of the Health Occupations Article requires revocation of a Maryland medical license for crimes involving moral turpitude:

(1) On the filing of certified docket entries with the Board by the Office of the Attorney General, the Board shall order the suspension of a license if the licensee is convicted of or pleads guilty or nolo contendere with respect to a crime involving moral turpitude, whether or not any appeal or other proceeding is pending to have the conviction or plea set aside.

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

"It is . . . settled that the related group of offenses involving *intentional dishonesty* for purposes of personal gain are crimes involving moral turpitude." *Oltman v. Maryland State*

Board of Physicians, 162 Md. App. 457, 486 (2005), quoting *Attorney Grievance Comm'n v. Walman*, 280 Md. 453, 460 (1977) (emphasis in original).

Dr. Ganz was convicted of obstruction of a criminal investigation of a health care offense, 18 U.S.C. § 1518. The elements of the offense include: (1) the defendant prevented, obstructed, misled, or delayed, or attempted to prevent, obstruct, mislead, or delay the communication of information or records to a criminal investigator, (2) the defendant acted willfully, and (3) the communication of information or records related to an investigation of an alleged violation of a Federal health care offense. As part of his guilty plea, Dr. Ganz agreed to a Statement of the Offense, which included this account: “these records had been created by Dr. Ganz after the fact so as to render them exculpatory. In the spring of 2007, Dr. Ganz caused these false records to be provided to the FBI and the U.S. Attorney’s Office for the District of Columbia in an attempt to cause the investigation to be closed without charges being brought against him.”

Based upon the Statement of the Offense, it is clear that Dr. Ganz misled, or attempted to mislead, the officials investigating his practice. His criminal offense, therefore, was one of “intentional dishonesty for purposes of personal gain,” *Oltman*, 162 Md. App. at 486, and, thus, constituted a crime involving moral turpitude. *Id.* Dr. Ganz’s conviction for a crime of moral turpitude requires the revocation of his Maryland medical license. Health Occ. § 14-404(b)(2).

ORDER

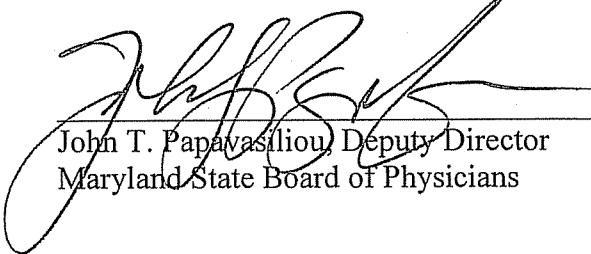
It is hereby

ORDERED that the medical license of Joel S. Ganz, M.D. (License No. D01544), by a majority of a quorum of the Board, be, and hereby is, **REVOKED**, as mandated by Md. Code Ann., Health Occ. § 14-404(b)(2); and it is further

ORDERED that this is a public document and may be disclosed under the Public Information Act.

6/7/10

Date


John T. Papavasiliou, Deputy Director
Maryland State Board of Physicians

NOTICE OF RIGHT TO APPEAL

Pursuant to section 14-408 of the Health Occupations Article, Joel S. Ganz, M.D., has the right to petition for judicial review. A petition for judicial review must be filed within 30 days from the date of the mailing of this Final Decision and Order. Board Orders are mailed on the day they are executed. An action for judicial review must be made as provided under section 10-222 of the State Government Article and the Maryland Rules 7-201 *et seq.*

If Dr. Ganz petitions for judicial review, the Board is a party and should be served with the court's process at the following addresses:

David Wagner, Assistant Attorney General
Office of the Attorney General
300 W. Preston Street, Suite 302
Baltimore, Maryland 21201

and

Barbara Vona, Chief
Compliance Administration
Maryland State Board of Physicians
4201 Patterson Avenue
Baltimore, Maryland 21215

The administrative prosecutor is no longer a party to this case and need not be served or copied.