

IN THE MATTER OF
KRISHAN MATHUR, M.D.,
Respondent.

* BEFORE THE MARYLAND
* STATE BOARD OF PHYSICIANS
* Case Number 2015-0259 A

License Number D28352

*

FINAL DECISION AND ORDER

PROCEDURAL HISTORY

Krishan Mathur, M.D. (“Dr. Mathur”) is an oncologist licensed by the Maryland State Board of Physicians (“Board”). On April 8, 2014, in the United States District Court for the District of Maryland (“U.S. District Court”), Dr. Mathur pled guilty to filing a false tax return, in violation of 26 U.S.C § 7206(1).¹ (Criminal Case No. 8:14-CR-00103-PWG-1). On September 29, 2014, the U.S. District Court judge sentenced Dr. Mathur to three years of probation, twelve months of home detention, and 400 hours of community service. The Court also ordered Dr. Mathur to pay a special assessment of \$100.00, a \$50,000.00 fine, and restitution in the amount of \$750,249.00.

On February 18, 2015, the Office of the Attorney General filed with the Board a petition to revoke Dr. Mathur’s medical license (“the Petition”) and show cause order pursuant to section 14-404(b) of the Medical Practice Act. The statute provides:

- (1) On the filing of certified docket entries with the Board by the Office of the Attorney General, a disciplinary panel shall order the suspension of a license if the licensee is convicted of or pleads guilty or nolo contendere with respect

¹ 26 U.S.C. § 7206(1) provides:

Any person who - -

- (1) **Declaration under penalties of perjury.** – Willfully makes and subscribes any return, statement, or other document which contains or is verified by a written declaration that it is made under the penalties of perjury, and which he does not believe to be true and correct as to every material matter; . . . shall be guilty of a felony and, upon conviction thereof, shall be fined not more than \$100,000 (\$500,000 in the case of a corporation), or imprisoned not more than 3 years, or both, together with the costs of prosecution.

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, a disciplinary panel shall order the revocation of a license on the certification by the Office of the Attorney General.

MD. CODE ANN., HEALTH OCC. (“Health Occ.”) § 14-404(b). Attached to the Petition were certified copies of the docket entries, the criminal information, the plea agreement, the agreed statement of facts, and the judgment of the U.S. District Court.

On March 18, 2015, Dr. Mathur, through his counsel, filed a response to the Petition and show cause order and requested a hearing. On March 20, 2015, Dr. Mathur’s counsel filed a supplemental response. Board Disciplinary Panel A (“Panel A”)² declined to grant Dr. Mathur’s request for a hearing pursuant to COMAR 10.32.02.07 E(3).

Having reviewed and considered the entire record in this case, Panel A issues this Final Decision and Order.

FINDINGS OF FACT

Panel A finds the following facts by a preponderance of the evidence:

1. Dr. Mathur was initially licensed to practice medicine in the State of Maryland on August 30, 1982, and at all times relevant to the charges in this case, Dr. Mathur has held a license to practice medicine in the State of Maryland.
2. On February 28, 2014, Dr. Mathur was charged in the U.S. District Court with filing a false tax return.
3. The United States Attorney’s Office for the District of Maryland offered Dr. Mathur a plea agreement, wherein Dr. Mathur would agree to plead guilty to filing a false tax return and agree to a stipulated statement of facts.
4. Dr. Mathur and his attorney agreed to the terms of the plea agreement and agreed that the government would have been able to prove the statement of facts, attached to the plea agreement as attachment A, had the case gone to trial. The statement of facts was, as follows:

² In 2013, the Board was divided into two disciplinary panels to resolve allegations of grounds for disciplinary action against a licensed physician. Health Occ. § 14-401. *See also* House Bill 1096, ch. 401, 2013 Md. Laws.

Defendant **KRISHAN M. MATHUR**, an oncologist, has been the owner and operator of the Cambridge Cancer and Infusion Center (hereinafter, the "medical practice") in Maryland since 1984. At all relevant times, the Cambridge Cancer and Infusion Center was a limited liability company and was reported as a Schedule C business on **MATHUR'S** U.S. Individual Income Tax Returns, Forms 1040.

At all relevant times, **MATHUR** also served as the Medical Director for Hospice of Charles County and received compensation for his services.

MATHUR falsely and intentionally overstated his expenses and underreported his income on his U.S. Individual Income Tax Returns, Forms 1040, for tax years 2006, 2007, and 2008, in three separate manners.

First, **MATHUR** falsely and intentionally failed to properly account for rebate payments. Specifically, **MATHUR** received rebate payments from certain companies from which he had purchased pharmaceuticals. **MATHUR** caused the rebate payments to be deposited into his personal bank account and failed to disclose both the rebate payments and his personal bank account records to his accountant. As a result of **MATHUR'S** actions, the accountant claimed the pharmaceutical purchases as expenses on Schedule C, but failed to properly report the income received from the rebate payments.

Second, **MATHUR** further falsely and intentionally inflated the supplies expense on the Schedule C filed with his tax returns for his medical practice by creating fictitious payments to medical suppliers. Specifically, **MATHUR** wrote checks and withdrew funds for personal use from his medical practice's bank account. **MATHUR** falsely indicated on business records that the aforementioned payments were made to medical suppliers, thereby causing his accountant to falsely overstate the supplies expense deduction on Schedule C.

Third, **MATHUR** falsely and intentionally failed to report income which he received from Hospice of Charles County for serving as its Medical Director. **MATHUR** caused the income from Hospice to be deposited into his personal bank account and failed to disclose both the Hospice income and his personal bank account records to his accountant.

The following chart provides the additional tax due as a result of the aforementioned conduct:

Tax Years	Amount of Additional Tax Due
2006	\$230,311
2007	\$230,987
2008	\$288,951
TOTAL:	\$750,249

On or about September 26, 2007 and September 11, 2008, **MATHUR** signed U.S. Individual Income Tax Returns, Forms 1040, for the calendar years 2006 and 2007 respectively. These tax returns contained written declarations that they were made under the penalties of perjury. However, **MATHUR** did not believe the returns to be true and correct as to every material matter, and falsely subscribed the returns with the specific intent to violate the law as further describe above, in violation of 26 U.S.C. § 7206(1).

5. On April 8, 2014, Dr. Mathur and his attorney appeared before a judge in the U.S. District Court and Dr. Mathur entered a plea of guilty to one count of filing a false tax return, in violation of 26 U.S.C. § 7206(1).
6. On September 29, 2014, Dr. Mathur was sentenced to three years of probation, twelve months of home detention, and 400 hours of community service. In addition to a special assessment of \$100 and a fine of \$50,000, the Court also imposed restitution in the amount of \$750,249.³
8. Dr. Mathur did not appeal his conviction within the time prescribed by law and the guilty plea and conviction have not been set aside.

CONCLUSIONS OF LAW

Panel A has considered all of the evidence before it and, hereby, decides the legal issues as follows:

Pursuant to COMAR 10.32.02.07 E(2), a response to a show cause order must be limited to the following issues: “(a) Lack of conviction or plea; (b) Whether the crime is one involving moral turpitude; (c) Misidentity of the respondent with the defendant in the criminal matter; and (d) Other relevant issues, if any, other than mitigation.” Dr. Mathur does not deny that he pled guilty to filing a false tax return and does not argue that he was misidentified as the defendant in the criminal case. Instead, Dr. Mathur argued that he was not convicted of a crime of moral turpitude and presented mitigation in an attempt to persuade Panel A not to revoke his license. Panel A is not permitted to consider mitigation, so the only issue for Panel A to resolve is whether filing a false tax return is a crime involving moral turpitude.

³ The Court acknowledged that restitution had been paid in full at the time of the sentencing hearing.

“The term ‘moral turpitude’ has been defined generally as importing ‘an act of baseness, vileness or depravity in the private and social duties which a man owes to his fellow men, or to society in general, contrary to the accepted and customary rule of right and duty between man and man.’” *Attorney Grievance Comm’n of Md. v. Walman*, 280 Md. 453, 459 (1977) (quoting *Braverman v. Bar Ass’n of Balt. City*, 209 Md. 328, 344, *cert. denied*, 352 U.S. 830 (1956)). “When applied to the context in which we deal with it here, the term connotes a fraudulent or dishonest intent.” *Id.* (Internal citations omitted).

Dr. Mathur acknowledges that willful tax evasion (26 U.S.C. §7201) is a crime of moral turpitude, but contends that the crime he pled guilty to, filing a false tax return (26 U.S.C. § 7206(1)), is different because it does not contain fraud as an essential element. The elements of 26 U.S.C. § 7206(1), as enumerated in Dr. Mathur’s plea agreement, are as follows:

(1) that the Defendant made and subscribed a tax return that was false as to a material matter; (2) that the return contained a written declaration that it was made under the penalties of perjury; (3) that the Defendant did not believe the return to be true and correct as to every material matter; and (4) that the Defendant falsely subscribed the return with the specific intent to violate the law.

The Court of Appeals of Maryland has previously determined that 26 U.S.C. § 7206(1), filing a false tax return, is a crime of moral turpitude. In *Attorney Grievance Comm’n v. Swerdloff*, 279 Md. 296, 299 (1977), the Court of Appeals addressed violations of 26 U.S.C. §7201 and 26 U.S.C. § 7206(1). The Court explained: “That Respondent was convicted of a violation of 26 U.S.C., Sec. 7206(1), instead of the Sec. 7201 offense involved in the three cases referred to above, is immaterial. Respondent’s offense, making a false and fraudulent income tax statement, is similarly infested with fraud, deceit and dishonesty.” *Id.* (Internal quotation marks omitted). In *Attorney Grievance Comm’n of Md. v. Deutsch*, 294 Md. 353, 366 (1982),

the Court of Appeals similarly held: “Knowingly to falsify a tax return by understating income is dishonest. The offense under § 7206(1) is one involving moral turpitude.”

The Board has also concluded in prior decisions that filing a false tax return is a crime of moral turpitude. See *In the Matter of Pradeep Srivastava, M.D.*, Case No. 2013-0868, December 30, 2013, <https://www.mbp.state.md.us/bpqapp/Orders/D3348312.303.PDF>, *In the Matter of Douglas F. Greer, M.D.*, Case Nos. 2008-0640, 2008-0653, July 23, 2009, <https://www.mbp.state.md.us/bpqapp/Orders/D2600507.239.PDF>. Dr. Mathur argues that his case is distinguishable because he was convicted solely of 26 U.S.C. § 7206(1) and was not sentenced to a term of imprisonment, while the Respondents in the prior Board decisions were convicted of 26 U.S.C. § 7206(1) in addition to other offenses and received jail sentences. His argument is unavailing. Regardless of whether Dr. Mathur committed one offense or multiple offenses and regardless of the sentence imposed by the criminal Court, the relevant consideration is whether the crime “connotes a fraudulent or dishonest intent.” *Walman*, 280 Md. at 459.

Even in circumstances where fraud is not explicitly an element of the offense, such as in 26 U.S.C. § 7203 (failure to file a tax return), the determination of whether the offense is a crime of moral turpitude depends on the particular facts of the case. *Attorney Grievance Comm’n of Md. v. Baldwin*, 308 Md. 397, 404 (1987) (citing *Walman*, 280 Md. at 462) (“*Walman* held that not every conviction of failure to file under [26 U.S.C.] § 7203 is a crime involving moral turpitude but that the issue depends on the particular facts of the individual case.”).

The agreed statement of facts in support of Dr. Mathur’s guilty plea definitively resolves the issue of whether the filing of a false tax return is a crime involving moral turpitude. In signing the statement of facts, Dr. Mathur agreed that he “falsely and intentionally overstated his expenses and underreported his income on his U.S. Individual Income Tax Returns, Forms 1040,

for years 2006, 2007 and 2008[.]” Dr. Mathur further acknowledged that he “did not believe the returns to be true and correct as to every material matter, and [that he] falsely subscribed the returns with the specific intent to violate the law[.]” These admissions conclusively establish that Dr. Mathur’s filing of false tax returns was fraudulent, deceitful, and dishonest. Accordingly, Panel A concludes that Dr. Mathur’s filing of a false tax return, in violation of 26 U.S.C. § 7206(1), is a crime involving moral turpitude.

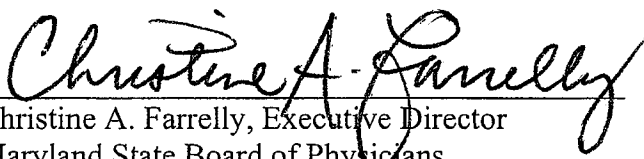
ORDER

It is, by Board Disciplinary Panel A, hereby:

ORDERED that the license of Krishan Mathur, M.D., license number D28352, to practice medicine in the State of Maryland, is **REVOKED**, as mandated by Health Occ. § 14-404 (b)(2); and it is further

ORDERED that this Final Decision and Order is a **PUBLIC DOCUMENT**.

10/14/2015
Date


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

NOTICE OF RIGHT TO PETITION FOR JUDICIAL REVIEW

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

If Dr. Mathur files a Petition for Judicial Review, the Board is a party and should be served with the court's process at the following address:

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

Notice of any Petition for Judicial Review should also be sent to the Board's counsel at the following address:

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