

IN THE MATTER OF	*	BEFORE THE MARYLAND
NDUBUISI J. OKAFOR, M.D.	*	STATE BOARD
Applicant.	*	OF PHYSICIANS
License No. D43460 (Expired)	*	Case No.: 2014-0903

* * * * *

FINAL DECISION AND ORDER

INVESTIGATIVE AND PROCEDURAL HISTORY

Ndubuisi J. Okafor, M.D. was initially licensed to practice medicine by the Maryland State Board of Physicians (“Board”) on July 2, 1992, and continuously renewed his license until he allowed his license to expire on September 30, 2005. Dr. Okafor filed an application requesting reinstatement on January 21, 2014. On his reinstatement application, Dr. Okafor answered “YES” to questions asking (1) if any State licensing or disciplinary board had taken adverse actions against his license; and (2) if he had ever been charged with or been convicted of any criminal act. Dr. Okafor attached to his application a copy of the Judgment in a Criminal Case (“Judgment”) in *United States of America v. Ndubuisi Joseph Okafor* (Criminal No. AW-07-0190) imposed July 1, 2008 in the United States District Court for the District of Maryland.

1. Board Investigation

The Board’s investigation revealed that Dr. Okafor pled guilty to three counts of a fifteen count indictment: (1) Tax Evasion (26 U.S.C. § 7201); (2) Aiding or Assisting in Filing False or Fraudulent Tax Documents (26 U.S.C. § 7206(2)); and (3) Health Care Fraud (18 U.S.C. § 1347). Court documents revealed that Dr. Okafor had evaded paying taxes to the Internal Revenue Service (“IRS”) by reporting false information to the IRS and tax preparers regarding his personal income and gross receipts from his medical practice, by establishing sham corporations in the Bahamas to create false expenses and disguise personal income, and by

diverting money from his medical practice to file false income tax returns. Dr. Okafor also defrauded Medicare and other health care programs and committed health care fraud by billing for hospital services that were not provided to his patients.

In July 2008, Dr. Okafor was sentenced to 65 months of incarceration, followed by three years of supervised release. He was also ordered to pay restitution to federal tax authorities in the amount of \$769,192.00 and to Medicare in the amount of \$33,060.80. Dr. Okafor filed a motion to withdraw his guilty plea and a motion for post-conviction relief, claiming that he received ineffective assistance of counsel during the plea agreement process. Both motions were denied, the appellate process is completed, the guilty pleas have not been set aside, and the convictions remain.

The Board's investigation also revealed that Dr. Okafor obtained a license to practice medicine in the District of Columbia ("D.C.") on August 26, 1992. Dr. Okafor's D.C. license expired on December 31, 2008. Dr. Okafor applied for reinstatement of his D.C. license and, on May 22, 2013, the D.C. Board of Medicine reinstated Dr. Okafor's license subject to certain terms and conditions, which were outlined in a Consent Order. The D.C. Consent Order expressly stated that it is a "public disciplinary action reportable to the National Practitioner Data Bank." The discipline in the D.C. Order was based on Dr. Okafor's convictions for tax evasion, aiding or assisting in filing false or fraudulent tax documents, and health care fraud.

2. Notice of Intent to Deny Reinstatement

On February 10, 2015, the Board issued a Notice of Intent to Deny Dr. Okafor's Reinstatement Application ("Notice of Intent to Deny") pursuant to Md. Code Ann., Health Occ. ("Health Occ.") § 14-205(b)(iii), which provides that the Board may, "[s]ubject to the Administrative Procedure Act, deny a license to an Applicant or, if the Applicant has failed to

renew the Applicant's license, refuse to renew or reinstate an Applicant's license for any of the reasons that are grounds for action under § 14-404 of this title[.]” The Notice of Intent to Deny cited the following grounds for disciplinary action: Health Occ. § 14-404(a)(21) (discipline by a licensing or disciplinary authority for an act that would be grounds for disciplinary action under this section), with underlying grounds of § 14-404(b)(2) (conviction of a crime of moral turpitude); § 14-404(a)(2) (fraudulently or deceptively using a license); § 14-404(a)(3)(ii) (unprofessional conduct in the practice of medicine); § 14-404(a)(11) (willfully making a false report in the practice of medicine); and § 14-404(a)(23) (willfully submitting false statements to collect fees for which services are not provided).¹ In addition, the Board notified Dr. Okafor of the Board's intent to deny his reinstatement application based on his failure to meet the requirements of good moral character, a prerequisite for licensure under § 14-307 of the Maryland Medical Practice Act.²

The Board sent a copy of the Notice of Intent to Deny to Dr. Okafor's address of record. The Notice advised Dr. Okafor of his right to a formal hearing before a disciplinary panel of the Board. Dr. Okafor requested a hearing and the Board referred the case to the Office of Administrative Hearings (“OAH”) for a formal contested case hearing in accordance with the Administrative Procedure Act (“APA”). Maryland Code Ann., State Gov't (“S.G.”) § 10-205. *See also* Health Occ. §14-405 (requiring the Board to grant an opportunity for a hearing under the APA).

¹ The Administrative Prosecutor issued an Amended Notice of Intent to Deny Application for Reinstatement on January 6, 2016 to correct one of the disciplinary grounds that formed the basis of the intent to deny reinstatement. The initial Notice of Intent to Deny Reinstatement cited Health Occ. § 14-404(a)(22), which was amended to Health Occ. § 14-404(a)(23) in the amended notice.

² The Board need not reach this issue to decide this case, and declines to do so.

3. Administrative Proceedings

The case was received at OAH on December 7, 2015. On December 10, 2015, OAH sent notices to the Administrative Prosecutor and Dr. Okafor, at his address of record, instructing them to appear at an in-person scheduling conference at OAH on January 6, 2016 at 9:30 a.m. Neither notice was returned to OAH by the United States Postal Service ("USPS"). Dr. Okafor did not request a postponement of the conference in writing and did not appear at the scheduling conference.

On January 7, 2016, by regular first-class USPS mail to Dr. Okafor's address of record, OAH sent Dr. Okafor a Notice of an In-Person Prehearing Conference scheduled at OAH for February 18, 2016 at 9:30 a.m. The Notice also stated that the "failure to appear or to give timely notice of your inability to appear for the prehearing conference may result in a decision against you." Dr. Okafor's notice was not returned to OAH by the USPS as undelivered.

On January 15, 2016, the Administrative Law Judge ("ALJ") issued a Scheduling Conference Order and Report. The Order advised Dr. Okafor that if he failed to appear for the prehearing conference or any future stage of the proceeding, the State would have the option to seek a default judgment against Dr. Okafor and/or the case could proceed in his absence. The Order was not returned by the USPS as undelivered.

By letter dated February 3, 2016, postmarked February 5, 2016, and received at OAH on February 11, 2016, Dr. Okafor stated that he intended to appear, but requested a postponement of the February 18, 2016 prehearing conference to retain an attorney. Dr. Okafor attached the January 7, 2016 Notice to his postponement request.

On February 12, 2016, the ALJ denied Dr. Okafor's request for postponement of the prehearing conference and sent a letter to both parties notifying them of the denial. The letter

reminded Dr. Okafor that he failed to appear at the scheduling conference and noted that the State could ask for a default judgment if he did not appear at the prehearing conference. The letter also informed Dr. Okafor that he could request a postponement of the merits hearing at the prehearing conference. In addition to sending the written correspondence, the ALJ's office staff called Dr. Okafor at the telephone number he provided on his postponement request and left a message notifying Dr. Okafor of the denial and reiterating that he was required to appear at the prehearing conference scheduled for February 18, 2016.

On February 18, 2016, Dr. Okafor failed to appear in person or through counsel at OAH for the scheduled prehearing conference. The Administrative Prosecutor appeared on behalf of the State. After waiting more than 15 minutes for Dr. Okafor to appear and receiving no phone call or written correspondence explaining his absence, the State made a Motion for Default against Dr. Okafor. The Administrative Prosecutor offered the exhibits that she planned to offer at the merits hearing in support of denying Dr. Okafor's application for reinstatement, and the ALJ admitted those exhibits into evidence.

On March 2, 2016, the ALJ issued a Proposed Default Order finding that Dr. Okafor had actual notice of the February 18, 2016 prehearing conference and proposing that: (1) Dr. Okafor be found in default; (2) the Board adopt the uncontested allegations set forth in the Amended Notice of Intent to Deny Application for Reinstatement as findings of fact; and (3) the Board deny Dr. Okafor's application for reinstatement. The Order informed the parties that, in accordance with COMAR 28.02.01.23C and COMAR 10.32.02.05B, they may file written exceptions to the Proposed Default Order and request an exceptions hearing with the Board at 4201 Paterson Avenue, Baltimore, Maryland 21215-2299 within fifteen (15) business days of the date of the Proposed Default Order.

By letter dated March 1, 2016, and received at OAH on March 4, 2016, Dr. Okafor responded to the ALJ's February 12, 2016 denial of his postponement request. He stated that he did not receive the notice for the scheduling conference and did not receive the denial letter until February 26, 2016, which was after the date of the prehearing conference. Dr. Okafor did not address whether he received a voicemail notifying him of the denial from OAH staff.

The ALJ responded by letter, on March 9, 2016, notifying Dr. Okafor that a proposed order of default was issued and that he could file exceptions with the Board, but that there were no more proceedings scheduled at OAH. Dr. Okafor filed exceptions on March 16, 2016 and the State filed a response to Dr. Okafor's exceptions on April 5, 2016. An exceptions hearing was held before Board Disciplinary Panel B ("Panel B") on April 27, 2016. Both parties appeared at the exceptions hearing and presented oral arguments before Panel B.

After considering the entire record, the Board issues this Final Decision and Order.

FINDINGS OF FACT

The Board adopts the ALJ's discussion of Dr. Okafor's failure to appear and the ALJ's finding that Dr. Okafor had actual notice of the February 18, 2016 prehearing conference. *See* ALJ Proposed Default Order, attached as **Exhibit 1**. These facts are incorporated by reference into the body of this document as if set forth in full.

The ALJ proposed that the Board adopt as findings of fact the allegations of fact set forth in the Amended Notice of Intent to Deny Reinstatement Application. Dr. Okafor did not take exception to this proposal. Based upon Dr. Okafor's default, the Board adopts the allegations of fact, numbered 1 - 24, in the Amended Notice of Intent to Deny Reinstatement Application. *See* Amended Notice, attached as **Exhibit 2**. The Board finds that these factual findings are unrefuted

due to Dr. Okafor's default. These facts are incorporated by reference into the body of this document as if set forth in full.

EXCEPTIONS

Dr. Okafor filed exceptions to the ALJ's Proposed Default Order. He argues that he did not receive proper notice of the prehearing conference and that his postponement request was improperly denied.

1. Notice

The APA requires an agency or OAH to "give all parties in a contested case reasonable written notice of the hearing." S.G. § 10-208(a). The APA, OAH regulations, and the Board's regulations provide for service by regular mail. *See* S.G. § 10-209(a); COMAR 28.02.01.05C(1); COMAR 10.32.02.04D(1). A person is deemed to have had a reasonable opportunity to know of the service if: "(1) The person is required by law to notify the agency of a change of address within a specified period of time; (2) The person failed to notify the agency in accordance with the law; (3) The agency or the Office mailed the notice to the address of record; and (4) The agency did not have actual notice of the change of address prior to service." S.G. § 10-209(c).

Pursuant to Health Occ. § 14-316(f), a licensee is required to notify the Board of any change in name or address within 60 days of the change. OAH mailed all notices to Dr. Okafor's address of record via regular first-class mail, none of the notices were returned by USPS, and neither OAH nor the Board received notice of any change of address prior to service. In addition, OAH staff went above and beyond the minimum notice requirements by calling Dr. Okafor at the number he provided on his postponement request to inform him that the ALJ denied his postponement and that his appearance was required at the preconference hearing. The Board finds that OAH provided Dr. Okafor with legally sufficient notice of the proceedings and adopts

the ALJ's finding that Dr. Okafor had actual notice of the February 18, 2016 prehearing conference. In any case, there is no question that Dr. Okafor received notice of the prehearing conference because he attached the notice to his postponement request. Dr. Okafor's exception is denied.

2. Postponement Request

OAH regulations provide that a request for postponement shall be made in writing, filed not less than five days before the scheduled hearing, and document the reasons for the postponement request. COMAR 28.02.01.16A, B. An ALJ is only required to grant a request for postponement if the party requesting the postponement establishes good cause. COMAR 28.02.01.16C. Dr. Okafor did not appear at the initial scheduling conference and then requested a postponement of the February 18, 2016 prehearing conference to retain an attorney.

A prehearing conference is a proceeding that may be held, in the ALJ's discretion, to resolve preliminary matters prior to the full contested case hearing on the merits. COMAR 28.02.01.17A. The ALJ denied Dr. Okafor's request for postponement of the prehearing conference, but reserved ruling on any request for postponement of the merits hearing to give Dr. Okafor the opportunity to raise the issue of postponing the date of the hearing at the prehearing conference. Dr. Okafor, however, failed to appear at the February 18, 2016 prehearing conference despite having actual notice of the proceeding.

The decision to grant or deny a postponement request is committed to the sound discretion of the hearing officer. *See Jones v. State*, 403 Md. 267, 294-95 (2008). The Board agrees with the ALJ's decision to deny the postponement request. The Notice of Intent to Deny Reinstatement in this case was issued over one-year prior to the prehearing conference. Dr. Okafor had more than sufficient time to obtain legal representation. Further, the ALJ gave Dr.

Okafor the opportunity to request a postponement of the merits hearing at the prehearing conference, which Dr. Okafor declined based on his failure to appear. Dr. Okafor's exception is denied.

CONCLUSIONS OF LAW

The Board concludes that Dr. Okafor waived his right to contest the Amended Notice of Intent to Deny Application for Reinstatement and the grounds for denial of his application based on his default for failing to appear at the OAH proceedings. Based upon the default, the Board concludes that Dr. Okafor's conduct and criminal convictions are grounds for disciplinary action under Health Occ. § 14-404(a)(21) (discipline by a licensing or disciplinary authority for an act that would be grounds for disciplinary action under this section), with underlying grounds of § 14-404(b)(2) (conviction of a crime of moral turpitude); § 14-404(a)(2) (fraudulently or deceptively using a license); § 14-404(a)(3)(ii) (unprofessional conduct in the practice of medicine); § 14-404(a)(11) (willfully making a false report in the practice of medicine); and § 14-404(a)(23) (willfully submitting false statements to collect fees for which services are not provided). These disciplinary grounds constitute a basis for denying Dr. Okafor's application for reinstatement. Health Occ. § 14-205(b)(1)(iii).

ORDER

It is, by the Board, hereby

ORDERED that the Board's January 6, 2016 Amended Notice of Intent to Deny Reinstatement Application of Ndubuisi Okafor, MD, License No. D43460 (expired), be **UPHELD**; and it is further

ORDERED that the Application for Reinstatement of medical licensure of Ndubuisi Okafor, MD, License No. D43460 (expired), is **DENIED**; and it is further

ORDERED that this is a Final Decision and Order of the Board, and as such, is a **PUBLIC DOCUMENT** pursuant to Md. Code Ann., Gen. Prov. § 4-101 *et seq.* (2014).

July 14, 2016
Date

Christine A. Farrelly
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. Okafor 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. Okafor 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**

Exhibit 1

MARYLAND STATE BOARD

OF PHYSICIANS

v.

NDUBUISI J. OKAFOR, M.D.,

APPLICANT

License Number: D43460 (expired)

* BEFORE KIMBERLY A. FARRELL,
* AN ADMINISTRATIVE LAW JUDGE
* OF THE MARYLAND OFFICE
* OF ADMINISTRATIVE HEARINGS
* OAH No.: DHMH-MBP-70-15-40592
* BOARD CASE No.: 2014-0903

* * * * *

RULING ON MOTION FOR DEFAULT

The Applicant, Ndubuisi J. Okafor, M.D., was originally licensed to practice medicine in the State of Maryland on July 2, 1992. His license expired effective September 30, 2005. On or about January 21, 2014, the Applicant submitted to the Maryland State Board of Physicians (Board) an Application for Reinstatement. By notice dated February 10, 2015, the Board issued a Notice of Intent to Deny Application for Reinstatement under the Maryland Medical Practice Act. The Board forwarded the matter to the Office of Administrative Hearings (OAH) where it was received on December 7, 2015. An in-person scheduling conference was set for 9:30 a.m. on January 6, 2016, at OAH's offices located at 11101 Gilroy Road, Hunt Valley, Maryland.

Assistant Attorney General Victoria Pepper, Administrative Prosecutor, represents the State. The OAH sent notice to the State and to the Applicant instructing each to appear for a scheduling conference on January 6, 2015, at 9:30 a.m. The Applicant's notice was not returned to the OAH as undelivered by the United States Postal Service (USPS). The Applicant did not appear. The Applicant did not request a postponement of the hearing in writing. The Docket Specialist for Board cases received a garbled and cut-off voice mail message minutes before the scheduling conference was to start. It was impossible to tell with which case the call might be associated. The caller was male and spoke with an accent. I advised the State of the call. Based

in part on the concern that the call might have been from the Applicant, the State did not seek to default the Applicant for his failure to appear.

Under the OAH's rules of procedure, "[i]f, after receiving proper notice, a party fails to attend or participate in a prehearing conference, hearing, or other stage of a proceeding, the judge may proceed in that party's absence or may, in accordance with the hearing authority delegated by the agency, issue a final or proposed default order against the defaulting party." Code of Maryland Regulations (COMAR) 28.02.01.23A. The Health Occupations Article provides in pertinent part:

Absence of individual

(d) If after due notice the individual against whom the action is contemplated fails or refuses to appear, nevertheless the hearing officer may hear and refer the matter to the Board or a disciplinary panel for disposition.

Factual findings

(e) After performing any necessary hearing under this section, the hearing officer shall refer proposed factual findings to the Board or a disciplinary panel for the Board's or disciplinary panel's disposition.

Md. Code Ann., Health Occ. § 14-405 (2014). Read in conjunction with subsection 14-405(d), subsection (e) clearly contemplates situations such as defaults where no hearing is required.

During the January 6, 2016 scheduling conference, a prehearing conference was scheduled for February 18, 2016. The OAH issued notices for the prehearing conference on January 7, 2016. Those notices included instructions to the parties regarding information in the form of a prehearing statement that had to be filed with the OAH and also sent to the opposing party not later than February 3, 2016. The Applicant's notice was not returned by the USPS as undelivered.

On January 15, 2016, I issued a Scheduling Conference Order and Report (Order). Among other things, the Order advised the Applicant that if he failed to appear for the prehearing

conference, scheduled for February 18, 2016, or any future stage of this proceeding such as the merits hearing tentatively scheduled for March 10, 2016, the State would have the option of seeking a default, which could result in a decision unfavorable to the Applicant, or the case could otherwise proceed in his absence. The Order offered the parties the opportunity to check with potential witnesses and to advise me on or before Thursday, January 28, 2016, if the March 10, 2016 date was not acceptable. The USPS did not return the Order as undelivered.

There was no communication from the Applicant until he sent a letter dated February 3, 2016, postmarked February 5, 2016, and received at the OAH on February 11, 2016. He did not copy the Administrative Prosecutor on the correspondence. The letter read:

In response to OAH request for in-person appearance, I intend to appear but currently do not have and can not afford an attorney. For this reason, I hereby request for postponement of the hearing with the case number noted above to March 23rd, 24th, or 25th. This will enable me [to] secure the services of an attorney through Maryland Volunteer Lawyer Service or the Legal Aid Bureau.

Due consideration of this request will be highly appreciated.

By letter dated and mailed February 12, 2016, I denied the Applicant's request to postpone the February 18, 2016 in-person prehearing conference. The letter further advised that during the prehearing conference the Applicant could raise the issue of changing the date for the merits hearing. I was concerned about the Applicant receiving timely notice of the ruling, so my secretary called the number provided by the Applicant on his postponement request and left a detailed message advising the Applicant that he had to appear at the in-person prehearing conference on February 18, 2016. The written ruling also reminded the Applicant that his prehearing statement was overdue and I urged him to submit it immediately.

On February 18, 2016, neither the Applicant nor anyone authorized to represent him appeared. At no time did the Applicant comply with instructions to provide a prehearing

statement. After waiting more than fifteen minutes after the scheduled starting time of the conference, the State moved for a Default against the Applicant.

The State offered the exhibits that it planned to offer into evidence to support the denial of the Applicant's reinstatement application, if the matter had proceeded to a merits hearing. I admitted those documents into evidence so that the Board or a disciplinary panel of the Board may consider them in fashioning a disposition. Md. Code Ann., Health Occ. § 14-405 (2014).¹

Upon fully considering the record, I find that the Applicant had actual notice of the February 18, 2016 prehearing conference. Accordingly, I propose granting the Motion for Default Judgment.

IT IS THEREFORE PROPOSED that the Applicant be found in default in OAH case number DHMH-SBP-70-15-40592;

IT IS PROPOSED that the General Allegations of Fact found in the Board's January 6, 2016 Amended Notice of Intent to Deny Application for Reinstatement Under the Maryland Medical Practice Act have not been contested;

IT IS PROPOSED that the Board adopt the allegations of fact set forth in the Amended Notice of Intent to Deny Application for Reinstatement Under the Maryland Medical Practice Act as its findings of fact;

IT IS PROPOSED that pursuant to § 14-407 of the Health Occupations Article, Annotated Code of Maryland (2014) the Applicant's application for reinstatement of his license to practice medicine in Maryland be **DENIED**;

IT IS PROPOSED that all further proceedings in this matter are **TERMINATED**; and

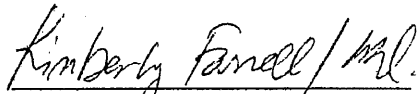
IT IS PROPOSED that in accordance with COMAR 28.02.01.23C and 10.32.02.05B:

¹ The sixteen numbered exhibits are in a tabbed and indexed binder marked as State A.

Any party may file exceptions to this proposed decision with the disciplinary panel of the Board of Physicians and request a hearing on the exceptions. The exceptions must be written and must 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 disciplinary panel of the Board of Physicians, 4201 Patterson Avenue, Baltimore, MD, 21215-2299, Attn: Christine A. Farrelly, Executive Director. A copy of the exceptions should be mailed to the opposing party. The opposing party will have fifteen (15) days from the filing of any written exceptions to file a response. The response must be addressed as above. The Office of Administrative Hearings is not a party to any review process.

March 2, 2016
Date Report Mailed

KF/kkc
Document #160950



Kimberly Farrell
Administrative Law Judge

Copies Mailed To:

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IN THE MATTER OF * **BEFORE THE**

NDUBUISI J. OKAFOR, M.D. * **MARYLAND STATE BOARD**

Applicant * **OF PHYSICIANS**

* * * * *

The Maryland State Board of Physicians (the “Board”) hereby notifies Ndubuisi J. Okafor (the “Applicant”) , License Number D43460 (expired), of the Board’s intent to deny his Application for Reinstatement of Medical Licensure (“Application”) under the Maryland Medical Practice Act (the “Act”), Md. Code Ann., Health Occ. (“H.O.”) §§ 14-101 *et seq.* (2014 Repl. Vol.). The pertinent provisions of the Act are as follows:

...

- ...

- The disciplinary grounds under which the Board intends to deny the Applicant's Application are:

1 On January 6, 2016, the Notice of Intent to Deny Application for Reinstatement Under the Maryland Medical Practice Act was amended to reflect accurately that the Respondent is charged under H.O. §14-404(a)(23) rather than H.O. § 14-404(a)(22).

- (a) *In general.* – Subject to the hearing provisions of § 14-405 of this subtitle, a disciplinary panel, on the affirmative vote of a majority of the quorum of the disciplinary panel, may reprimand any licensee, place any licensee on probation, or suspend or revoke a license if the licensee:

(21) Is disciplined by a licensing or disciplinary authority or convicted or disciplined by a court of any state or county or disciplined by any branch of the United States uniformed services or the Veteran's Administration for an act that would be grounds for disciplinary action under this section[.]

The applicable underlying disciplinary grounds are:

- ...
- (2) Fraudulently or deceptively uses a license;
- (3) Is guilty of:
- ...
- (ii) Unprofessional conduct in the practice of medicine;
- ...
- (11) Willfully makes or files a false report or record in the practice of medicine;
- ...
- (23) Willfully submits false statements to collect fees for which services are not provided[.]

- (b) *Crimes involving moral turpitude.*

- ...
- (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.

The Act further provides:

§ 14-307. Qualifications of Applicants.

- (a) *In general.* – To qualify for a license, an Applicant shall be and individual who meets the requirements of this section.
- (b) *Moral character.* – The Applicant shall be of good moral character[.]

GENERAL ALLEGATIONS OF FACT2

The Board bases its intent to deny the Applicant's Application for Reinstatement on the following facts that the Board has reason to believe are true:

1. The Applicant was originally licensed to practice medicine in the State of Maryland on July 2, 1992.

Procedural History

A. Prior Disciplinary History

2. On May 28, 1997, the Board charged the Applicant with immoral and unprofessional conduct in the practice of medicine, in violation of H.O. § 14-404(a)(3)(i) and (ii) after investigation revealed he had engaged in an inappropriate sexual and social relationship with a patient.
3. On November 19, 1997, the Applicant entered into a Consent Order with the Board under the terms of which, *inter alia*, he was suspended for six months with the condition that his suspension could be stayed after three months if a psychiatric evaluation concluded that the Applicant was fit to practice medicine.
4. On March 28, 1998, the Board stayed the Applicant's suspension after receiving a favorable report from the Applicant's psychiatric evaluator. The Board placed the Applicant on probation for three years with terms and conditions.

2 The statements of the Applicant's conduct described herein are intended to provide the Applicant notice of intent to deny his Reinstatement Application. They are not intended as, and do not necessarily represent, a complete description of the evidence, either documentary or testimonial, to be offered against the Applicant in connection with this Notice of Intent to Deny Reinstatement Application.

5. On February 19, 2002, the Board terminated the Applicant's probation.

B. Reinstatement Application/Criminal Conviction

6. The Applicant's license expired effective September 30, 2005.
7. On or about January 21, 2014, the Applicant submitted to the Board an Application for Reinstatement.
8. The Board's Application for Reinstatement includes a list of "Character and Fitness Questions." The Applicant answered "YES" to the following questions:

...

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

...

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

9. The Applicant attached to his Reinstatement Application the following explanation of his affirmative responses:

Explanation of "yes" answer to question #6g:

On July 01, 2008, I was convicted and incarcerated for tax evasion and Medicare fraud based on billing errors on 3 patients. There was no conscious intent to defraud Medicare or evade taxes. There were billing errors on 3 patients that resulted in the fraud charges. The tax charges were due to business record errors.

Explanation of "yes" answer to question #6b:

As a result of the July 01, 2008 conviction, I executed a Consent Order with the District of Columbia Board of Physicians to reinstatement (*sic*) my license to practice medicine and upon complying with the stipulated conditions, my license to practice medicine in the District of Columbia was reinstated.

10. The Applicant attached to his Reinstatement Application a copy of the Judgment in a Criminal Case ("Judgment") in *United States of America v. Ndubuisi Joseph Okafor* (Criminal No. AW-07-0190) imposed July 1, 2008 in the United States District Court of the District of Maryland. The Judgment documented that the Applicant had pleaded guilty to three counts of a fifteen count Superseding Indictment. The counts to which the Applicant pleaded guilty are: Tax Evasion, in violation of Title 26, U.S. Code, § 7201; False Income Tax Returns, in violation of Title 26, U.S. Code, § 7206(2) and Health Care Fraud, in violation of Title 18, U.S. Code, § 1347. A true test copy of the Applicant's *Superseding Indictment* is attached hereto as Attachment A. A true test copy of the Applicant's *Judgment in a Criminal Case* is attached hereto as Attachment B.
11. Court documents obtained by Board staff revealed that the Applicant had evaded paying taxes to the Internal Revenue Services ("IRS") by reporting false information to the IRS and tax preparers regarding his personal income and gross receipts from his medical practice, establishing sham corporations in the Bahamas to create false expense and disguise personal income, and by diverting money from his medical practice to file false income tax returns. The Applicant defrauded Medicare and other health care programs and committed health care fraud by billing for hospital services that were not provided to his patients.
12. In July 2008, the Applicant was sentenced in the United States District Court for the District of Maryland to imprisonment for 65 months, followed

by three years of supervised release. The Applicant was also ordered to pay restitution to federal taxing authorities in the amount of \$769,192.00 and to Medicare in the amount of \$33,060.80.

13. The Applicant thereafter filed a motion to withdraw his guilty plea. The United States District Court for the Fourth Circuit denied his motion. By unpublished Opinion decided May 14, 2009, the United States Court of Appeals for the Fourth Circuit found no reversible error and affirmed the District Court's denial. A true test copy of the Opinion of the United States Court of Appeals and Order is attached as Attachment C and D, respectively.
14. Subsequently, the Applicant filed for post-conviction relief pursuant to 18 U.S.C. § 2255, claiming that he was the victim of ineffective counsel during the plea agreement process. By Memorandum Order issued July 29, 2010, the United States District Court denied the Applicant's Certificate of Appealability. The July 29, 2010 Memorandum Order is attached hereto as Attachment E.
15. The Applicant thereafter appealed the District Court's order denying relief under 28 U.S.C. § 2255. Effective March 2, 2011, the United States Court of Appeals for the Fourth Circuit dismissed the Applicant's appeal. A true test copy of the Court of Appeals unpublished Opinion, Judgment and Mandate are hereby attached as Attachment F, G and H, respectively.
16. The appellate process in the Applicant's case is completed; the plea was not set aside.

17. On March 15, 2013, the Applicant was released from prison and is currently on supervised probation for three years.

C. District of Columbia licensure

18. The Applicant was initially licensed to practice medicine in the District of Columbia ("D.C.") on August 26, 1992.
19. The Applicant's D.C. license expired on December 31, 2008.
20. On or around March 14, 2013, the D.C. Board of Medicine reviewed the Applicant's application for reinstatement and voted to reinstate the Applicant's license subject to terms and condition of a Consent Order. ("D.C. Consent Order").
21. The terms of the Applicant's D.C. Consent Order include the condition that the Applicant may not practice in D.C. until he has received written approval from the D.C. Board that he has completed requirements of a re-entry plan. The Applicant's re-entry plan includes the requirements that the Applicant: successfully pass the Special Purpose Examination ("SPEX"); provide to the D.C. Board a return to practice letter; complete six continuing medical education ("CME") credits in the area of ethics and six CME credits in the area of documentation and record keeping; practice for a minimum of two years under the supervision of a Board-approved physician supervisor who shall assess the Applicant's practice and make quarterly reports to the Board.
22. The D.C. Consent Order expressly states that it is a "public disciplinary action reportable to the National Practitioner Data Bank."

Basis of Intent to Deny Reinstatement

23. The Applicant was disciplined by the D.C. Board, a licensing authority, for acts that would be grounds for disciplinary action under the Maryland Medical Practice Act (H.O. §14-404(a)(21)). The Applicant was criminally convicted for defrauding the Medicaid program and other health care programs and evading taxes and his conviction has not been set aside. (H.O. § 14-404(b)(2)). Crimes of moral turpitude include those “in which an intent to defraud is an essential element.” *Oltman v. Board of Physicians*, 163 Md.App. 457, 470 (2005). The Applicant’s conduct supports the underlying grounds that he: fraudulently or deceptively used his medical license, in violation of H.O. § 14-404(a)(2); is guilty of unprofessional conduct in the practice of medicine, in violation of H.O. § 14-404(a)(3)(ii); willfully made or filed a false report in the practice of medicine, in violation of H.O. § 14-404(a)(11) and willfully submitted false statements to collect fees for which services are not provided, in violation of H.O. § 14-404(a)(23). Moreover, the Applicant has attempted to minimize and downplay his conduct, a poor predictor of his potential for rehabilitation.
24. The Applicant’s conduct, in whole or in part, violated H.O. § 14-404(a)(21) with underlying grounds of H.O. § 14-404(a)(2), (3)(ii), (11) and (23) and H.O. § 14-404(b)(2).
25. The Applicant’s conduct, in whole or in part, is evidence that he is not of good moral character as is required by H.O. § 14-307.

NOTICE OF HEARING

In accordance with the Maryland Administrative Procedure Act, Md. Code Ann. State Gov't §§ 10-101 *et seq.* (2014 Repl. Vol.), the Board hereby notifies the Applicant that a prehearing conference and hearing have been scheduled before an Administrative Law Judge at the Office of Administrative Hearings, 11101 Gilroy Road, Hunt Valley, Maryland 21031. The Applicant will be advised by the Office of Administrative Hearings of the scheduling of the prehearing conference and hearing.

Date

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