

IN THE MATTER OF * BEFORE THE BOARD OF PHYSICIAN
DAN EDOKPOLOR AUSTIN, M.D. * QUALITY ASSURANCE OF MARYLAND
LICENSE # D46605 * CASE # 98-0537

FINAL ORDER

On February 3, 1999, the Board of Physician Quality Assurance (the "Board") issued a Final Order suspending the license of Dan Edokpolor Austin, M.D. (The "Respondent", license number D46605, pursuant to Md. Code Ann., Health Occ. ("H.O.") §14-404(b). The Final Order dated February 3, 1999, is attached and incorporated into this Final Order.

On January 13, 2000, the Office of the Attorney General filed with the Board an Amended Petition to Revoke Respondent's Medical License, pursuant to Md. Code Ann., Health Occ. ("H.O.") §14-404(b)(2). H.O. §14-404(b) provides:

(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.

Attached to the Petition were exhibits which consisted of the

following: certified copy of the General Docket for the Second Circuit Court of Appeals; the Board's Final Order dated February 3, 1999; and a certified copy of the Summary Order of the United States Court of Appeals for the Second Circuit. The Board has also considered in this case the appropriate underlying documents first submitted on November 4, 1998 by the Office of the Attorney General, which documents gave rise to the Board Order of February 3, 1999.

By letter dated January 19, 2000, a copy of the Petition with exhibits and a Show Cause Order which ordered Respondent to show cause by February 24, 2000, why his medical license should not be revoked pursuant to H.O. §14-404(b)(2) was sent by certified mail to Respondent. Respondent did not file a response to the Show Cause Order with the Board.

On May 24, 2000, the Board convened for a final decision in the case.

FINDINGS OF FACT

By clear and convincing evidence, the Board finds that:

1. At all times relevant to these charges, Respondent was licensed to practice medicine in the State of Maryland.
2. On or about July 15, 1994, a federal grand jury issued an indictment against the Respondent in the criminal matter of United States of America v. Dan Austin, Criminal Docket Case Number

CR-940737-ALL, in the United States District Court, Eastern District of New York. The Respondent was charged with two (2) counts of mail fraud, a felony in violation of Title 18, Sections 1341 and 3551 et seq. of the United States Code; one (1) count of loan fraud, a felony in violation of Title 20, Section 1097(a) and Title 18 Sections 3551 et seq. of the United States Code; and three (3) counts of fraudulent use of other individuals' social security numbers, a felony in violation of Title 42, Section 4089(a)(7)(B) and Title 18, Sections 3551 et seq. of the United States Code.

3. The indictment alleged that Respondent devised and intended to devise a scheme to defraud the United States and to obtain money by means of false and fraudulent pretenses and representations. Specifically, the Respondent prepared and submitted fraudulent student loan applications to loan programs operated by the United States Department of Education that enabled undergraduate and graduate school students to borrow money directly from various lending institutions. The Respondent used fictitious applicant names and social security numbers assigned to individuals who were neither the Respondent nor the applicants named on the student loan applications. The Respondent represented on the applications that the loan was to be used for attendance at a school outside of the United States. It was the loan program's procedure that when a loan was approved for attendance at a school outside of the United States, the program would direct certain financial institutions to mail a check directly to the student

borrower, made payable solely to the student borrower. The Respondent thus caused to be delivered by mail student loan checks made payable to fictitious individuals.

4. On or about September 14, 1994, the Respondent was indicted under a Superseding Indictment on a total of two (2) counts of mail fraud, twenty-three (23) counts of loan fraud and fifteen (15) counts of fraudulent use of other individuals' social security numbers.

5. During the period from November 15, 1994, through November 22, 1994, the Respondent was tried before a jury in the United States District Court for the Eastern District of New York.

6. On November 22, 1994, the Respondent was found guilty of all counts contained in the Superseding Indictment.

7. On March 22, 1995, the Respondent was sentenced by the Honorable Jack B. Weinstein, United State District Court Judge, United States District Court for the Eastern District of New York, to imprisonment for thirty-three (33) months and supervised release for three (3) years. The Respondent was also ordered to pay a special assessment of \$2,100.00.

8. On or about March 31, 1995, the Respondent appealed the judgment of the trial court. On or about April 2, 1996, the United States Court of Appeals affirmed the judgment of the lower court as to two (2) counts of mail fraud and two (2) counts of loan fraud (fraudulently obtaining student loans), vacated the remaining thirty-eight (38) counts and remanded the case for resentencing.

9. The Government subsequently dismissed one (1) count of loan fraud. By Amended Order dated January 28, 1997, the Honorable Jack B. Einstein, United State District Court Judge, United States District Court for the Eastern District of New York, sentenced the Respondent to thirty-one (31) months of imprisonment and three (3) years of supervised release based on the remaining two (2) counts of mail fraud and one (1) count of loan fraud. The fine was waived because of the Respondent's inability to pay.

10. On or about February 7, 1997, the Respondent appealed the amended judgment of the district court.

11. By Order dated April 24, 1997, the United States Court of Appeals for the Second Circuit District dismissed the Respondent's appeal.

12. On November 4, 1998, the Office of the Attorney General filed with the Board a Petition to Revoke Respondent's Medical License pursuant to H.O. §14-404(b).

13. On December 8, 1998, the Respondent's counsel filed a Response to the Petition and Show Cause Order.

14. On December 21, 1998, the Office of the Attorney General filed a Response to the Respondent's response.

15. On or about December 3, 1998, the Respondent, through counsel filed a motion to reinstate his appeal. Thereafter, on January 4, 1999, the motion was granted by the United States Circuit Court of Appeals for the Second Circuit.

16. On February 3, 1999, the Board issued a Final Order in

which the Board concluded as a matter of law that the crimes committed by the Respondent were crimes involving moral turpitude and ordered the Respondent's license to practice medicine in Maryland to be suspended as mandated by Maryland Code Ann., Health Occ. §14-404(b) (1). The Board ordered the suspension to remain in effect until one of two events occurred: 1) the Board receives a certified docket entry that the convictions have been set aside or the guilty plea set aside; or 2) the Board issues an Order upon receipt of certification required by Md. Code Ann., Health Occ. §14-404(b) (2) that the appellate process has been completed and the conviction has not been reversed with respect to a crime involving moral turpitude.

17. On August 4, 1999, the United States Court of Appeals for the Second Circuit affirmed the judgments of the United States District Court in U.S. v. Austin (Court of Appeals Docket No. 97-1078).

18. The Respondent did not file a petition for rehearing within fourteen (14) days of the entry of the judgment as required by Federal Rules of Appellate Procedure. Thereafter, the mandate of the court was issued on August 25, 1999.

19. A party who files with the Supreme Court of the United States a petition for a writ of certiorari to review judgment in any case, criminal or civil, entered by a United States Court of Appeals must do so within ninety (90) days after entry of judgment. The Respondent did not file a petition for a writ of certiorari

with the Supreme Court of the United States.

20. The Maryland Court of Appeals, in Bar Ass'n of Baltimore City v. Seigel, 275 Md. 521 (1975), has defined a crime of moral turpitude as one involving "fraud, deceit and dishonesty."

21. Based on the totality of the circumstances surrounding Respondent's act, the Board finds that the crimes to which Respondent was found guilty, namely, mail fraud in violation of U.S.C. Title 18, Sections 1341 and 3551 et seq.; and loan fraud in violation of U.S.C. Title 20, Section 1097(a) and Title 18, Sections 3551 et seq., are crimes involving moral turpitude.

CONCLUSIONS OF LAW

Based on the foregoing Findings Of Fact, a majority of the full authorized membership of the Board concludes that the Respondent has been found guilty of a crime of moral turpitude, within the meaning of Md. Code Ann., Health Occ. §14-404(b)(2) and that all appellate processes have been completed.

ORDER

Based on the foregoing Findings of Fact and Conclusions of Law, it is this 24 day of May, 2000, by a majority of the full authorized membership of the Board considering this case

ORDERED that the license of Respondent, Dan Edokpolor Austin, M.D., to practice medicine in the State of Maryland is hereby

REVOKED as mandated by Md. Code Ann., Health Occ. §14-404(b)(2);
and be it further

ORDERED that this is a Final Order of the Board of Physician
Quality Assurance and as such is a PUBLIC DOCUMENT pursuant to Md.
Code Ann., State Gov't §§10-611 et seq.

NOTICE OF RIGHT TO APPEAL

Pursuant to Md. Code Ann., Health Occ. §14-408, you have the
right to take a direct judicial appeal. Any appeal shall be made as
provided for judicial review of a final decision in the
Administrative Procedure Act, State Government Article, and Title
7, Chapter 200 of the Maryland Rules.

Date

5/24/00

Sidney E. Seidman, M.D.
Chair

