

COMMONWEALTH OF MASSACHUSETTS

MIDDLESEX, SS.

BOARD OF REGISTRATION
IN MEDICINE

Adjudicatory Case No. 2018-012

In the Matter of)

SALOMON MELGEN, M.D.)
_____)

FINAL DECISION AND ORDER

This matter came before the Board for final disposition on the basis of the Administrative Magistrate's Order of Default and Recommended Decision ("Default Recommended Decision"), dated August 29, 2019, which found Salomon Melgen, M.D. ("Respondent") in default. After full consideration of that Default Recommended Decision, which is attached hereto and incorporated by reference, as well as the Petitioner's Memorandum on Disposition, the Board adopts the Default Recommended Decision in full.

Findings of Fact

In light of the Division of Administrative Law Appeals' ("DALA") conclusion that the Respondent failed to file an Answer to the Order to Show Cause/Statement of Allegations and his failure to respond to the motion for summary decision, the Board adopts the Default Recommended Decision, finding the Respondent in default pursuant to M.G.L. c. 30A, § 10(2). Therefore, the allegations contained in the Statement of Allegations are deemed admitted. See Peters & Russel, Inc. v. Dorfman, 188 F.2d 711 (7th Cir. 1951); and Northwest Yeast Co. v. Broutin, 133 F.2d 638 (6th Cir. 1943). The Findings of Fact read as follows:

1. The Respondent was born on August 5, 1954. The Respondent graduated from the National University of Pedro Henriquez Urena in 1978. The Respondent had been

licensed to practice medicine in Massachusetts beginning on June 30, 1983 under license number 51238. His license to practice medicine in Massachusetts lapsed on August 5, 2014 when the Respondent failed to renew it.

2. In or about April 2015, the Respondent was indicted in the United States District Court for the Southern District of Florida in case number 9:15-cr-80049-KAM on charges of health care fraud in violation of 18 U.S.C. § 1347, making false, fictitious, and fraudulent claims in violation of 18 U.S.C. § 287, and making false statements relating to healthcare in violation of 18 U.S.C. § 1035(a)(2).
3. On or about April 28, 2017, Respondent was convicted of forty-six (46) counts of 18 U.S.C. § 1347 (health care fraud), eighteen (18) counts of 18 U.S.C. § 287 (making false, fictitious, and fraudulent claims), and ten (10) counts of 18 U.S.C. § 1035(a)(2) (making false statements relating to health care) in the aforementioned case.
4. On February 22, 2018, the Respondent was sentenced to serve 204 months in prison on the basis of the aforementioned convictions. See Sentencing Judgment in U.S. District Court, Southern District of Florida, West Palm Beach Division, Case No. 15-80049-CR-MARRA-1, a complete and accurate copy of which is attached hereto as Attachment 1.

Conclusions of Law

- A. Pursuant to G.L. c. 112, §5, ninth par. (g), the Board finds that the Respondent has been convicted of a criminal offense which reasonably calls into question his ability to practice medicine. See also 243 CMR 1.03(5)(a)(7);
- B. Pursuant to 243 CMR 1.03(5)(a)(3), the Board finds that the Respondent has engaged in conduct which places into question his competence to practice medicine, including

but not limited to gross misconduct in the practice of medicine or practicing medicine fraudulently, or beyond its authorized scope, or with gross incompetence or negligence on repeated occasions;

- C. Pursuant to 243 CMR 1.03(5)(a)(10), the Board finds that the Respondent has practiced medicine deceitfully, or engaged in conduct which has the capacity to deceive or defraud;
- D. Pursuant to 243 CMR 1.03(5)(a)(18), the Board finds that the Respondent engaged in misconduct in the practice of medicine; and
- E. Pursuant to Levy v. Board of Registration in Medicine, 378 Mass. 519 (1979); Raymond v. Board of Registration in Medicine, 387 Mass. 708 (1982), the Board finds that the Respondent has engaged in conduct that undermines the public confidence in the integrity of the medical profession.

Sanction

The Board maintains the authority to discipline a physician who has been convicted of a crime. See 243 CMR 1.03(5)(a)7. In the past, the Board has revoked the licenses of those who have been convicted of economic crimes, particularly Medicaid or insurance fraud. See In the Matter of Daniel Nevarre, M.D., Board of Registration in Medicine, Adjudicatory Case No. 2019-022 (Final Decision and Order, October 24, 2019)(physician's inchoate right to renew his license revoked, for pleading guilty to one count of Medicaid fraud and one count of Insurance fraud); In the Matter of Richard Ng, M.D., Board of Registration in Medicine, Adjudicatory Case No. 2014-026 (Consent Order, June 25, 2014)(physician's license revoked, retroactive to date of voluntary agreement not to practice, for pleading guilty to 11 counts of illegal prescribing, 9 counts of Medicaid false claims, and 7 counts of Medicaid excess charges); In the Matter of

Gerardo Yanayaco, M.D., Board of Registration in Medicine, Adjudicatory Case No. 2008-047 (Final Decision and Order, June 16, 2010)(revocation for default involving criminal conviction of insurance fraud, grand larceny, offering a false instrument for filing, falsifying a business record, and participating in a scheme to defraud, involving billing for services not provided, billing for medically unnecessary tests and for tests not performed, and upcoding to obtain a higher reimbursement rate); In the Matter of Harold F. Goodman, M.D., Board of Registration in Medicine, Adjudicatory Case No. 00-08-DALA (Final Decision and Order, May 9, 2001)(physician's license revoked for convictions on 13 counts of Medicaid fraud); and In the Matter of Peter J. Embriano, M.D., Board of Registration in Medicine, Adjudicatory Case No. 99-17-XX (July 28, 1999)(physician's license revoked for pleading guilty to one count of mail fraud, one count of false claims, and one count of filing a false tax return).

To date, the Respondent has made no effort to defend himself against the allegations of impropriety raised by the Board. There have been multiple opportunities, brought to the Respondent's attention through the issuance of notice, for him to respond to the charges. As a function of its obligations to protect the public health, welfare and safety, it is proper for the Board to exercise its authority to discipline the Respondent. See Levy v. Board of Registration in Medicine, 378 Mass. 519 (1979). Pursuant to 243 CMR 1.03(15), the Board maintains the authority to impose discipline against a physician whose license has been revoked by operation of law. For these reasons, the Board hereby REVOKES the Respondent's inchoate right to renew his license.

The Respondent shall provide a complete copy of this Final Decision and Order, with all exhibits and attachments, within ten (10) days by certified mail, return receipt requested, or by hand delivery to the following designated entities: any in- or out-of-state hospital, nursing home,

clinic, other licensed facility, or municipal, state, or federal facility at which he practices medicine; any in- or out-of-state health maintenance organization with whom he has privileges or any other kind of association; any state agency, in- or out-of-state, with which he has a provider contract; any in- or out-of-state medical employer, whether or not he practices medicine there; and the state licensing boards of all states in which he has any kind of license to practice medicine. The Respondent shall also provide this notification to any such designated entities with which he becomes associated for the duration of this revocation. The Respondent is further directed to certify to the Board within ten (10) days that he has complied with this directive. The Board expressly reserves the authority to notify independently, at any time, any of the entities designated above, or any other affected entity, of any action taken.

The Respondent has the right to appeal this Final Decision and Order within thirty (30) days, pursuant to G.L. c. 30A, §§ 14 and 15, and G.L. c. 112, § 64.

DATE: December 19, 2019

Candace Lapidus Sloane, MD

Candace Lapidus Sloane, M.D.
Chair

ATTACHMENT 1

UNITED STATES DISTRICT COURT

Southern District of Florida

West Palm Beach Division

UNITED STATES OF AMERICA

v.

SALOMON E. MELGEN

JUDGMENT IN A CRIMINAL CASE

Case Number: **15-80049-CR-MARRA-1**

USM Number: **67276-050**

Counsel For Defendant: **Matthew Menchel, Esq./Kirk Ogrosky, Esq./Josh Sheptow**

Counsel For The United States: **Roger Stefin/Carolyn**

Bell/Alexandra Chase, AUSA

Court Reporter: **Stephen Franklin**

The defendant was found guilty on Counts 1 - 7, 9, 11-15, 17, 19-21, 24-29, 31-38, 40-45 and 47-76 of the Indictment.

The defendant is adjudicated guilty of these offenses:

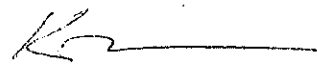
<u>TITLE & SECTION</u>	<u>NATURE OF OFFENSE</u>	<u>OFFENSE ENDED</u>	<u>COUNT</u>
18 U.S.C. § 1347	Health care fraud	6/21/12	1-7, 9,11-15, 17, 19-21, 24-29, 31-38, 40-45
18 U.S.C. §§ 287 and 2	False, fictitious and fraudulent claims	5/24/12	47-65
18 U.S.C. §§ 1035(a)(2) and 2	False statements relating to health care	3/20/12	66-76

The defendant is sentenced as provided in the following pages of this judgment. The sentence is imposed pursuant to the Sentencing Reform Act of 1984.

All remaining counts are dismissed on the motion of the government.

It is ordered that the defendant must notify the United States attorney for this district within 30 days of any change of name, residence, or mailing address until all fines, restitution, costs, and special assessments imposed by this judgment are fully paid. If ordered to pay restitution, the defendant must notify the court and United States attorney of material changes in economic circumstances.

Date of Imposition of Sentence: **2/22/2018**



Kenneth A. Marra
United States District Judge

Date: February 22, 2018

DEFENDANT: **SALOMON E. MELGEN**
CASE NUMBER: **15-80049-CR-MARRA-1**

IMPRISONMENT

The defendant is hereby committed to the custody of the United States Bureau of Prisons to be imprisoned for a total term of **204 months**. This term consists of **120 months** as to each of **Counts 1-7, 9, 11-15, 17 and 19-21, 24-29, 31-38 and 40-45** to be served concurrently with each other, **60 months** as to **Counts 47-65**, to be served concurrently with each other but consecutively to the terms imposed in **Counts 1-7, 9, 11-15, 17 and 19-21, 24-29, 31-38 and 40-45** and **24 months** as to **Counts 66-76** to be served concurrently with each other but consecutively to the terms imposed in **Counts 47-65**.

The court makes the following recommendations to the Bureau of Prisons: The defendant enter the Bureau of Prisons Residential Drug Treatment Program and that he be designated to FCI Jesup, low facility. (The Court recommends that the sentence length public safety factor be waived.)

The defendant is remanded to the custody of the United States Marshal.

RETURN

I have executed this judgment as follows:

Defendant delivered on _____ to _____

at _____, with a certified copy of this judgment.

UNITED STATES MARSHAL

DEPUTY UNITED STATES MARSHAL

DEFENDANT: SALOMON E. MELGEN
CASE NUMBER: 15-80049-CR-MARRA-1

SUPERVISED RELEASE

Upon release from imprisonment, the defendant shall be on supervised release for a term of **Three (3) years as to Counts 1-7, 9, 11-15, 17, 19-21, 24-29, 31-38, 40-45 and 47-76, all terms to run concurrently.**

The defendant must report to the probation office in the district to which the defendant is released within 72 hours of release from the custody of the Bureau of Prisons.

The defendant shall not commit another federal, state or local crime.

The defendant shall not unlawfully possess a controlled substance. The defendant shall refrain from any unlawful use of a controlled substance. The defendant shall submit to one drug test within 15 days of release from imprisonment and at least two periodic drug tests thereafter, as determined by the court.

The defendant shall cooperate in the collection of DNA as directed by the probation officer.

The defendant shall not possess a firearm, ammunition, destructive device, or any other dangerous weapon.

If this judgment imposes a fine or restitution, it is a condition of supervised release that the defendant pay in accordance with the Schedule of Payments sheet of this judgment.

The defendant must comply with the standard conditions that have been adopted by this court as well as with any additional conditions on the attached page.

STANDARD CONDITIONS OF SUPERVISION

1. The defendant shall not leave the judicial district without the permission of the court or probation officer;
2. The defendant shall report to the probation officer and shall submit a truthful and complete written report within the first fifteen days of each month;
3. The defendant shall answer truthfully all inquiries by the probation officer and follow the instructions of the probation officer;
4. The defendant shall support his or her dependents and meet other family responsibilities;
5. The defendant shall work regularly at a lawful occupation, unless excused by the probation officer for schooling, training, or other acceptable reasons;
6. The defendant shall notify the probation officer at least ten days prior to any change in residence or employment;
7. The defendant shall refrain from excessive use of alcohol and shall not purchase, possess, use, distribute, or administer any controlled substance or any paraphernalia related to any controlled substances, except as prescribed by a physician;
8. The defendant shall not frequent places where controlled substances are illegally sold, used, distributed, or administered;
9. The defendant shall not associate with any persons engaged in criminal activity and shall not associate with any person convicted of a felony, unless granted permission to do so by the probation officer;
10. The defendant shall permit a probation officer to visit him or her at any time at home or elsewhere and shall permit confiscation of any contraband observed in plain view of the probation officer;
11. The defendant shall notify the probation officer within seventy-two hours of being arrested or questioned by a law enforcement officer;
12. The defendant shall not enter into any agreement to act as an informer or a special agent of a law enforcement agency without the permission of the court; and
13. As directed by the probation officer, the defendant shall notify third parties of risks that may be occasioned by the defendant's criminal record or personal history or characteristics and shall permit the probation officer to make such notifications and to confirm the defendant's compliance with such notification requirement.

DEFENDANT: **SALOMON E. MELGEN**

CASE NUMBER: **15-80049-CR-MARRA-1**

SPECIAL CONDITIONS OF SUPERVISION

Financial Disclosure Requirement - The defendant shall provide complete access to financial information, including disclosure of all business and personal finances, to the U.S. Probation Officer.

Permissible Search - The defendant shall submit to a search of his/her person or property conducted in a reasonable manner and at a reasonable time by the U.S. Probation Officer.

DEFENDANT: SALOMON E. MELGEN
CASE NUMBER: 15-80049-CR-MARRA-1

CRIMINAL MONETARY PENALTIES

The defendant must pay the total criminal monetary penalties under the schedule of payments on Sheet 6.

	<u>Assessment</u>	<u>Fine</u>	<u>Restitution</u>
TOTALS	\$6,700.00	\$0.00	\$42,561,205.00

This amount is a preliminary order of restitution which is subject to modification upon additional evidence presented to the Court. The determination of full restitution is deferred. An Amended Judgment in a Criminal Case (AO 245C) will be entered after such determination.

If the defendant makes a partial payment, each payee shall receive an approximately proportioned payment, unless specified otherwise in the priority order or percentage payment column below. However, pursuant to 18 U.S.C. § 3664(i), all nonfederal victims must be paid before the United States is paid.

<u>NAME OF PAYEE</u>	<u>TOTAL LOSS*</u>	<u>RESTITUTION ORDERED</u>	<u>PRIORITY OR PERCENTAGE</u>
To victim as listed in presentence report	\$42,561,205.00	\$42,561,205.00	

Restitution with Imprisonment - It is further ordered that the defendant shall pay restitution in the amount of \$42,561,205.00. During the period of incarceration, payment shall be made as follows: (1) if the defendant earns wages in a Federal Prison Industries (UNICOR) job, then the defendant must pay 50% of wages earned toward the financial obligations imposed by this Judgment in a Criminal Case; (2) if the defendant does not work in a UNICOR job, then the defendant must pay a minimum of \$25.00 per quarter toward the financial obligations imposed in this order. Upon release of incarceration, the defendant shall pay restitution at the rate of 10% of monthly gross earnings, until such time as the court may alter that payment schedule in the interests of justice. The U.S. Bureau of Prisons, U.S. Probation Office and U.S. Attorney's Office shall monitor the payment of restitution and report to the court any material change in the defendant's ability to pay. These payments do not preclude the government from using other assets or income of the defendant to satisfy the restitution obligations.

* Findings for the total amount of losses are required under Chapters 109A, 110, 110A, and 113A of Title 18 for offenses committed on or after September 13, 1994, but before April 23, 1996.

**Assessment due immediately unless otherwise ordered by the Court.

DEFENDANT: SALOMON E. MELGEN
CASE NUMBER: 15-80049-CR-MARRA-1

SCHEDULE OF PAYMENTS

Having assessed the defendant's ability to pay, payment of the total criminal monetary penalties is due as follows:

A. Lump sum payment of \$6,700.00 due immediately.

Unless the court has expressly ordered otherwise, if this judgment imposes imprisonment, payment of criminal monetary penalties is due during imprisonment. All criminal monetary penalties, except those payments made through the Federal Bureau of Prisons' Inmate Financial Responsibility Program, are made to the clerk of the court.

The defendant shall receive credit for all payments previously made toward any criminal monetary penalties imposed.

This assessment/fine/restitution is payable to the CLERK, UNITED STATES COURTS and is to be addressed to:

U.S. CLERK'S OFFICE
ATTN: FINANCIAL SECTION
400 NORTH MIAMI AVENUE, ROOM 08N09
MIAMI, FLORIDA 33128-7716

The assessment/fine/restitution is payable immediately. The U.S. Bureau of Prisons, U.S. Probation Office and the U.S. Attorney's Office are responsible for the enforcement of this order.

Payments shall be applied in the following order: (1) assessment, (2) restitution principal, (3) restitution interest, (4) fine principal, (5) fine interest, (6) community restitution, (7) penalties, and (8) costs, including cost of prosecution and court costs.