

COMMONWEALTH OF MASSACHUSETTS

MIDDLESEX, SS.

BOARD OF REGISTRATION
IN MEDICINE

Adjudicatory Case No. 2013-033
(RM-13-383)

In the Matter of)
)
)

JAMES DAVID FENN, M.D.)
_____)

Final Decision and Order

This matter came before the Board of Registration in Medicine (the "Board") for final disposition on the basis of the Administrative Magistrate's Order of Default Recommended Decision, dated October 8, 2013. The Administrative Magistrate recommended that "allegations 2-10 of the Statement of Allegations relative to alleged license renewal fraud be established for purposes of this proceeding." Complaint Counsel has filed a Motion to Correct the Recommended Decision, requesting that "the part of the Recommended Decision that states 'allegations 2-10' be changed to 'allegations 2-14.'" Complaint Counsel's Motion to Correct the Recommended Decision also requests "that the Board add a conclusion of law finding that Respondent violated G. L. c. 112, § 5, ninth par. (a) and 243 CMR 1.03(5)(a)1 by fraudulently procuring his renewal." After full consideration of Complaint Counsel's Memorandum on Disposition and the Order of Default Recommended Decision, which is attached hereto and incorporated by reference, the Board adopts the Order of Default Recommended Decision, amending it by adding the following:

Findings of Fact

1. On October 1, 2011, the Respondent was arrested in Currituck County, North Carolina, on charges of driving while impaired. This criminal matter was resolved on August 22, 2012.

2. On October 26, 2011, the Respondent's attorney notified the North Carolina Medical Board (North Carolina Board) that the Respondent had been arrested.

3. On January 8, 2012, the Respondent was arrested at his home in Currituck County, North Carolina and charged with Assault on a Female. This criminal matter was resolved on March 19, 2012.

4. On February 15, 2012, the North Carolina Board issued an Order for Examination requiring the Respondent to submit himself for a comprehensive evaluation and examination by a substance abuse assessment center.

5. On February 23, 2012, the Respondent completed his Massachusetts Physician Renewal Application (Renewal Application).

6. The Respondent listed Berkshire Medical Center in Pittsfield, Massachusetts as his business address.

7. At the time of his renewal, the Respondent did not work at Berkshire Medical Center in Pittsfield, Massachusetts.

8. Question 17(a) on the Renewal Application asks "Have you been charged with any criminal offense during this period."

9. The Respondent answered, "No" to Question 17(a).

10. Question 17(c) on the Renewal Application asks, "Are any criminal offenses pending against you today?"

11. The Respondent answered, "No" to Question 17(c).

12. Question 18(c) on the Renewal Application asks, Have you been the subject of an investigation by any governmental authority, including the Massachusetts Board of Registration in Medicine or any other state medical board, health care facility, group practice, employer, or professional association."

13. The Respondent answered, "No" to Question 18(c).

Conclusions of Law

A. The Respondent is guilty of fraudulently procuring his certificate of registration or its renewal in violation of G. L. c. 112, § 5, ninth par. (a) and 243 CMR § 1.03(5)(a)1.

Sanction

The Respondent has violated G. L. c. 112, § 5, ninth par. (a) and 243 CMR § 1.03(5)(a)1 by listing his business address on his Renewal Application as Berkshire Medical Center in Pittsfield, Massachusetts, and incorrectly answering questions number 17(a) (charged with a criminal offense since last renewal), 17(c) (any pending criminal charges), and 18(c) (investigation by any other state medical board) on his Renewal Application.

Truthfully answering the questions asked on a licensing application is of the utmost importance because, the Board "depends on the integrity and honor of [licensure and] relicensure applicants and, indeed, any lapse in this fundamental element of the process is a basic threat to the reasonably prompt and fair physician licensure system in the Commonwealth." In the Matter of John R. Knight, M.D., Board of Registration in Medicine, Adjudicatory Case No. 85-26-GR (Final Decision and Order, December 10, 1986). When a physician falsely answers a question on a licensing application, the physician deprives the Board of the opportunity to review his or her record and determine

whether he or she should be licensed to practice medicine in Massachusetts. In the Matter of Irina Z. Agronin, M.D., Board of Registration in Medicine, Adjudicatory Case No. 02-06-DALA (Final Decision and Order, August 21, 2002).

A reprimand and a fine are usually imposed when a physician provides false answers to the questions asked on a renewal application. In the Matter of Peter Gherardi, M.D., Board of Registration in Medicine, Adjudicatory Case No. 2008-030 (Consent Order, August 20, 2008) (physician reprimanded and fined \$5,000 for failing to disclose an arrest on his limited license application and his initial full license application, and for failing to disclose a subsequent arrest on a renewal application); In the Matter of Samuel B. Wilson, M.D., Board of Registration in Medicine, Adjudicatory Case No. 2007-023 (Consent Order, May 16, 2007) (physician reprimanded and fined \$2,500 for disclosing one of two operating under the influence arrests on renewal application). Due to the unique circumstances presented in this case a reprimand and fine is an insufficient sanction.

When the Respondent submitted his Renewal Application he falsely answered questions asking whether he had been charged with a crime since he last renewed his license, whether any criminal charges were pending against him and whether he had been the subject of an investigation by another state medical board. See In the Matter of John R. Knight, M.D., Board of Registration in Medicine, Adjudicatory Case No. 85-26-GR (Final Decision and Order, December 10, 1986) (physician's license to practice medicine was revoked in part because he falsely answered a renewal application question asking whether disciplinary action had been taken against him in any state; failed to disclose that he had been disciplined by the state of New York).

By falsely answering these three questions, the Respondent hid from the Board that he had been arrested twice since he submitted his last renewal application, and that one of the arrests involved his consumption of alcohol. The Respondent also failed to disclose that the North Carolina Medical Board ("North Carolina Board") issued an Order for Examination, which required the Respondent to submit himself for a comprehensive evaluation and examination by a substance use assessment center. The Respondent's failure to truthfully answer the appropriate questions on his Renewal Application is especially egregious because he failed to inform this Board that (1) the North Carolina Board was investigating him concerning allegations of impairment, and (2) one of his criminal arrests, driving while impaired. The Respondent's failure to inform the Board about these matters deprived the Board of its opportunity to review the Respondent's actual record and determine whether he was capable of practicing medicine in the Commonwealth of Massachusetts in a manner that did not jeopardize patient safety. The Respondent also falsely listed Berkshire Medical Center as his business address on his Renewal Application; when the Respondent submitted his Renewal Application he did not work at Berkshire Medical Center. Under these unique circumstances—falsely answering renewal application questions and thereby failing to disclose information related to possible impairment—revocation of the Respondent's license to practice medicine is the only appropriate sanction.

In consideration of these factors, and the Respondent's conduct, the Board hereby terminates the Respondent's Voluntary Agreement Not to Practice, and REVOKES the Respondent's license to practice medicine.

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; the state licensing boards of all states in which he has any kind of license to practice medicine; the Drug Enforcement Administration – Boston Diversion Group; and the Massachusetts Department of Public Health Drug Control Program. 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 independently notify, at any time, any of the entities designated above, or any other affected entity, of any action it has 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.

Candice Lapidus Sloane, MD

Candice Lapidus Sloane, M.D.
Board Chair

Date: February 19, 2014

SENT CERTIFIED MAIL 2/21/14 mg⁶