COMMONWEALTH OF MASSACHUSETTS

MIDDLESEX, SS. BOARD OF REGISTRATION

IN MEDICINE

Adjudicatory Case No. 2018-012

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In the Matter of )

) **FINAL DECISION AND ORDER**

SALOMON MELGEN, M.D. )

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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

1. 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);
2. 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;
3. 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;
4. Pursuant to 243 CMR 1.03(5)(a)(18), the Board finds that the Respondent engaged in misconduct in the practice of medicine; and
5. 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 Signed by Candace Lapidus Sloane, M.D.

Candace Lapidus Sloane, M.D.

Chair

To obtain a copy of the out-of-state disciplinary order, please contact the appropriate state’s medical licensing board directly. A list of state medical boards and contact information is available at <https://www.fsmb.org/contact-a-state-medica-board/>. You may also obtain a copy of the out-of-state disciplinary order by submitting a public records request (PRR) with the Massachusetts Board of Registration in Medicine. PRR forms and additional information can be found at <https://www.mass.gov/board-of-registration-in-medicine-public-records>.