

**DEPARTMENT OF STATE
OFFICE OF CONTROLLED SUBSTANCES**

BEFORE THE SECRETARY OF STATE

In Re:

YVETTE K. BAKER, M.D.

Controlled Substance

Registration No.: MD 4124

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Case Nos. 38-05-10
38-12-10

REVOCATION ORDER

WHEREAS, the Secretary of the Department of State (“the Secretary”) is in receipt of the attached Recommendation of the Chief Hearing Officer regarding the controlled substance registration of Yvette K. Baker, M. D., Registration No. MD 4124; and

WHEREAS, pursuant to 16 *Del. C.* § 4733(a)(8), the Secretary may consider any factor relevant to and consistent with the public interest in determining whether continued registration is in the public interest; and

WHEREAS, after a hearing on the merits, the Chief Hearing Officer found that the final order of the Board of Medical Licensure and Discipline (“the Board”) permanently revoking Dr. Baker’s license to practice medicine presented factors having a direct bearing on the public health and safety; and

WHEREAS, the Board found no reason for Dr. Baker, a psychiatrist, to be prescribing a high number of narcotic pain medications, and further found that, one year after her 2010 felony convictions for health care fraud and misdemeanor convictions for false representation and making a false statement, Dr. Baker had not recognized the seriousness of her actions; and

WHEREAS, the Board found that the amount of the Superior Court order of restitution - \$173,958 – was evidence of the substantial impact of Dr. Baker’s fraudulent conduct on the public, and the criminal fine of \$100,000, in addition to incarceration and a lengthy period of

probation, showed the seriousness of the harm to the public and Dr. Baker's breach of the public trust; and

WHEREAS, the Chief Hearing Officer found that the findings of the Board presented factors which had a direct bearing on the public health and safety, by virtue of Dr. Baker's use of fraudulent acts in her practice of medicine; and

WHEREAS, based on the evidence, findings of fact and conclusions of law in this matter, the Chief Hearing Officer recommended permanent revocation of the Controlled Substance Registration No. MD 4124 issued to Dr. Baker; and

WHEREAS, Dr. Baker submitted no exceptions, comments or arguments concerning the Chief Hearing Officer's conclusions of law and recommended penalty; and

WHEREAS, the Secretary is authorized pursuant to 16 *Del. C.* § 4734 to revoke the controlled substance registration where the Secretary finds continued registration is inconsistent with the public interest; and

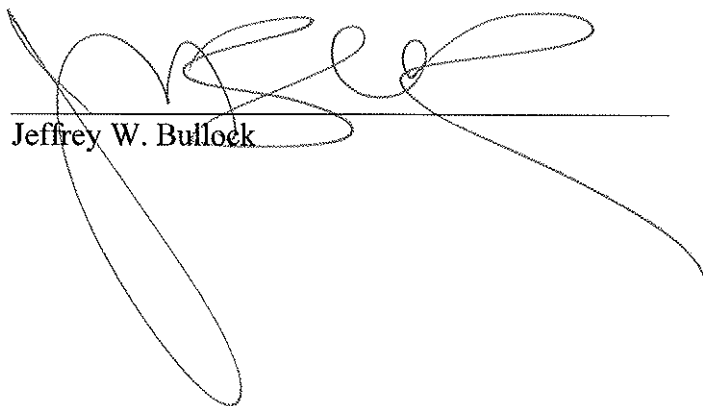
WHEREAS, the Secretary finds that the continued registration of Dr. Baker is inconsistent with the public interest due to her prescribing practices described herein, her criminal convictions pertaining to her fraudulent conduct, and the resulting impact on the public;

NOW, THEREFORE, IT IS ORDERED this 8th day of November, 2013:

1. The controlled substance registration of Yvette K. Baker, M. D., is hereby permanently revoked pursuant to 16 *Del. C.* § 4734 as the Secretary finds that the continued registration of Dr. Baker is inconsistent with the public interest.
2. In accordance with the provisions of 16 *Del. C.* § 4735(e), any and all controlled substances owned by or in the possession of Yvette K. Baker, M. D., are to be placed under seal by the Director of the Office of Controlled Substances.
3. Pursuant to 16 *Del. C.* § 4735(f), the Drug Enforcement Administration shall be notified of this revocation and provided with a copy of this Order.
4. A copy of this Order is to be personally served upon Yvette K. Baker, M. D.

SO ORDERED this 8th day of November, 2013.

SECRETARY OF STATE



Jeffrey W. Bullock

**BEFORE THE DELAWARE SECRETARY OF STATE AND/OR
THE CONTROLLED SUBSTANCE ADVISORY COMMITTEE**

In the Matter of:)	
)	Case Nos. 38-05-10
Yvette K. Baker, M.D.)	38-12-10
Cont. Subst. Reg. No. MD 4124)	

RECOMMENDATION OF CHIEF HEARING OFFICER

Nature of the Proceedings

The State of Delaware, by and through the Department of Justice, has filed a formal complaint and second amended complaint before the Delaware Secretary of State and/or the Delaware Controlled Substance Advisory Committee against Yvette K. Baker, M.D., a present or former licensee of the Board of Medical Licensure and Discipline and holder of Delaware Controlled Substance Registration (CSR) No. MD 4124. Dr. Baker's medical specialty is psychiatry. The second amended complaint seeks revocation of Dr. Baker's CSR. The amended complaint alleges, *inter alia*, the following:

1. That Dr. Baker prescribed controlled substances for an office manager and members of the manager's family as well as other employees and non-employees who worked in her office other than for legitimate medical purposes and without maintaining sufficient medical records regarding those individuals under regulations of the Board of Medical Licensure and Discipline and under the Uniform Controlled Substances Act;
2. That Dr. Baker prescribed a variety of controlled substances for the spouse of her office manager while he was being prescribed such medications by 11 other physicians;
3. That Dr. Baker's office manager was also being prescribed controlled substances by five other physicians, and that the manager died in 2010 nine days after her hospitalization and diagnosis of hypoventilation from narcotic and benzodiazepine overuse or pneumonia;
4. That Dr. Baker made misrepresentations to the Delaware Medication Assistance Program regarding her prescribing of controlled substances for a patient/employee;

5. That Dr. Baker left records for 13 patients unsecured in her office and in view of other patients;
6. That while practicing medicine while her legal ability to prescribe certain controlled substances had been withdrawn pursuant to a consented agreement approved by order of the Board of Medical Licensure and Discipline, and while she had agreed to an order imposing other restrictions on her practice, including the surrender of her State and Federal Controlled Substance Registrations, Dr. Baker prescribed controlled substances for a patient;
7. That since 2009 Dr. Baker has violated various provisions of the Board's regulations pertaining to the use of controlled substances for the treatment of pain;
8. That since 2008 Dr. Baker has ignored concerns raised by the Division of Medicaid and Medical Assistance (DMMA) concerning her simultaneous prescription of Xanax and Klonopin for the same patients;
9. That Dr. Baker has ignored concerns raised by the DMMA concerning her failure to order lab tests to determine if medications prescribed by her were having deleterious effects;
10. That Dr. Baker continued to prescribe opiates for a patient whose medication screen indicated that she was not taking such medications.
11. That during the period January 2009-April 2010 fewer than 10% of the prescriptions written by her and presented at Sav-On Pharmacy in Dover DE were for psychotropic medications typically prescribed for patients with psychiatric or psychological problems, while more than 91% of prescriptions were for narcotic, benzodiazepine and amphetamine medications;
12. That Dr. Baker fails to refer patients for whom controlled substances are prescribed to other professionals including pain specialists and addiction counselors;
13. That Dr. Baker lacks the training, education and knowledge to prescribe narcotic medications;
14. That by her conduct Dr. Baker has violated the Delaware Uniform Controlled Substances Act and regulations under that Act, has acted inconsistent with the public interest, and has posed a danger to the public health and safety in violation of 16 *Del. C. Sec. 1734(a)*.

The State has also filed a complaint and second amended complaint before the Delaware Board of Medical Licensure and Discipline. In that second amended complaint the

State sought revocation of Dr. Baker's license to practice medicine for many of the reasons alleged in the instant CSR complaint pending before the Secretary. That complaint has resulted in a recommendation to the Board by the undersigned hearing officer that Dr. Baker's medical license be revoked.

At the beginning of the hearing, the State's attorney requested that the factual record in this hearing constitute the basis for a recommendation both to the Board of Medical Licensure and Discipline with regard to the discipline of Dr. Baker's license, and to the Secretary of State with regard to Dr. Baker's Controlled Substance Registration. That request was granted.

An open administrative hearing on the State's second amended complaint was convened on due notice at 10:15 a.m., April 10, 2013, in the offices of the Division of Professional Regulation, 861 Silver Lake Blvd., Dover DE. Barbara Gadbois, Deputy Attorney General, represented the State. Dr. Baker failed or refused to attend the hearing. (Her non-attendance is discussed below.) All witnesses testified under oath or affirmation. A registered court reporter was present who made a stenographic record of the proceedings. This is the recommendation of the undersigned hearing officer to the Secretary of State and/or the Controlled Substance Advisory Committee after due consideration of all relevant evidence.

Summary of the Evidence

The State first called Ms. Devashree Brittingham, a paralegal employed in the Administrative Hearing Unit of the Division of Professional Regulation. One of her duties is to schedule and prepare notices of hearings before Division hearing officers.

Ms. Brittingham testified that the notice of this hearing was mailed to Dr. Baker on March 18, 2013. A copy of the notice was admitted as State Exhibit 1 ("SX 1"). The notice was mailed to Dr. Baker at the last residential address which she had reported to the Board and

to the Division as the place where she should receive official communications from the Board. Ms. Brittingham testified that licensees are required to continually update the Board data base with any changes in residential address. Ms. Brittingham located Dr. Baker's last reported residential address in that data base. She testified that she had again checked the data base on the day before the hearing, and Dr. Baker had not reported or entered any change.

The notice in this case provided Dr. Baker with the date, time, place and subject matter of the hearing. The notice informed Dr. Baker that the April 10 hearing would provide a factual record with respect to both the State's disciplinary complaint and the complaint seeking revocation of Dr. Baker's Controlled Substance Registration. SX 1.

The hearing notice was sent to Dr. Baker via First Class and certified mail. The certified mail copy of the notice was returned by the Postal Service to the Division on April 16, 2013 (after the hearing) with the notation "return to sender/unclaimed/unable to forward". The returned certified copy is attached to SX 1. The first class mailed copy sent to the same residential address was not returned to the Division as undeliverable. Since mailing the hearing notice to Dr. Baker on March 18, Ms. Brittingham had had no contact from Dr. Baker in any form.

Based on this sworn record, it was determined that the State had proved good and valid notice to Dr. Baker through service of SX 1 to her last reported physical residence by both First Class and certified mail. Though the certified mail copy of the hearing notice was returned to the Division as "unclaimed", the First Class mailing of SX 1 has not been returned to the Division by the Postal Service as undeliverable. Since the notice was prepared and mailed to Dr. Baker in the normal course of Division business, since the First Class notice has not been returned to the Division as undeliverable, and since Dr. Baker has not overcome the

presumption of receipt under the “mailbox rule”, it is presumed that she did receive timely notice of the hearing.

Post-Hearing Note: On April 25, 2013 (15 days after the hearing) Dr. Baker electronically mailed a letter to the undersigned. In the letter she states that she had not received the hearing notice “due to an incorrect address and two address changes...” Because of a planned surgery, she asks if the hearing can be rescheduled to late June 2013. A copy of the letter has been entered into evidence as Respondent Exhibit 1 (“RX 1”). She adds that she does not now have a permanent residential address for purposes of receiving mail.

Because she claims no current residential address, I responded to Dr. Baker by email and informed her that the hearing had been held on April 10 because the State had proved actual service of the hearing notice, and because in her letter she admits that she had in fact received the First Class mailing of the notice. She was informed that recommendations would be submitted to the Board and to the Secretary of State based on that hearing record, and that, whether or not she agreed with the recommendation, she was free to present her arguments on the notice issue to the Board and the Secretary after the recommendations are issued.

The State called no other witnesses and relies in this case primarily on certified court records. At the outset of the State’s factual presentation, Ms. Gadbois noted that the State has made a number of claims of violations by Dr. Baker of the Medical Practice Act and regulations of the Board as well as violations of the Uniform Controlled Substances Act, 16 *Del. C. Ch. 47*, and regulations under that Act in the amended complaints.

However, Ms. Gadbois represented that, since the State is in a position to prove six felony convictions for crimes substantially related to the practice of medicine, it is not necessary to prove all of those additional allegations. In other words, Ms. Gadbois stated that

it is the State's intention to prove only the facts underlying the criminal case in which guilty pleas were entered to acts of fraud, false representations and false statements. She further stated that, in any event, Dr. Baker is not permitted to have her medical license restored until she serves any sentence as ordered by the Court, has complied with all orders of the sentencing court, and five years have then elapsed.

The State offered a certified Superior Court criminal docket sheet which was admitted as SX 2. The docket sheet lists 62 separate charges against Dr. Baker for health care fraud, one charge of obtaining a benefit by false representation, and one charge of making a false statement. The docket sheet reflects that Dr. Baker entered a plea of guilty on October 23, 2012, to four health care fraud charges as well as the obtaining benefit and false statement charges. In exchange, the State dismissed the remaining 58 charges against Dr. Baker *nolle prosequi*.

SX 3 is a certified copy of the Superior Court sentencing order which flowed from Dr. Baker's guilty pleas on October 23. In that order the Court accepted Dr. Baker's pleas. Dr. Baker was ordered sentenced to the custody of the Department of Correction on the first health care fraud guilty plea to ten years at supervision level 5 (incarceration) suspended after one year, followed by two years at supervision level 3, and three years at supervision level 1. On the remaining health care fraud convictions Dr. Baker was sentenced to three years at supervision level 5, suspended for one year at supervision level 3 and two years at supervision level 1. The two false statement charges resulted in sentences of one year at supervision level 5 suspended for one year at supervision level 1.

Ms. Gadbois noted that the October 23, 2012 sentencing order also states that on that date Dr. Baker consented to the "suspension of her license to practice medicine in the State of

Delaware for the duration of her probationary period.” SX 3 at 4. She also consented to the entry against her of a civil judgment in the amount of \$292,230.24, of which \$173,958 constituted restitution. *Id.* Dr. Baker further was ordered, *inter alia*, to be evaluated for substance abuse and mental health issues.

The October 2012 sentencing order was amended by a modified sentencing order of the same Court entered on December 14, 2012. A certified copy of that Order was admitted as SX 4. On December 14 Dr. Baker was ordered released from supervision level 5 and was ordered to begin her probationary period. The modified sentencing order reiterated Dr. Baker’s restitution obligation of \$172,211.39 payable to “DHSS/DMS/ARMS” and her obligation to the “DOJ Medicaid Fraud Control Unit” of \$1,746.85 . SX 4 at 8. The prosecutor represented that those amounts constitute funds unlawfully received by Dr. Baker as a result of her fraudulent conduct. The Court also reaffirmed the earlier imposed criminal fine of \$100,000.

The State also offered for the information of the hearing officer two documents printed from a State of Delaware website which reflect the current status of Dr. Baker’s medical license and Controlled Substance Registration. The documents show that Dr. Baker’s medical license was ordered suspended on July 27, 2010, and then expired on March 21, 2011. Her CSR was suspended on July 21, 2010, and expired on June 30, 2011.

Ms. Gadbois speculated that it is unlikely that Dr. Baker will be in a position to pay the aforementioned criminal fine and civil restitution order in the foreseeable future. Nonetheless, if Dr. Baker does satisfy those judgments, satisfies all other terms of the orders of the Superior Court, waits five years and then applies for license reinstatement, the State takes the position that the Board should permanently revoke her medical license and the Secretary do the same with respect to her CSR. By filing and prosecuting the amended complaint, the State intends to

make an official record of this matter so that any Board of Medical Licensure and Discipline as may be constituted in the future, and any Secretary of State then sitting, will be aware of the seriousness of Dr. Baker's conduct and will be disinclined to reinstate her privilege to practice medicine and to prescribe controlled substances should she petition for restoration.

When asked by the hearing officer to further clarify the State's position regarding discipline in this case, Ms. Gadbois argued that the State does not believe that the currently sitting Board and Secretary of State may bind the discretion of future Board members or another Secretary who may then be in office. Hence, the current Board and Secretary should register their respective judgments regarding the seriousness of the findings in this case and revoke both the CSR and medical license formerly held by Dr. Baker and now in an expired status. The State intends to prove all which may be possible at this point to make a complete record so that future officials may make informed decisions in the event that Dr. Baker seeks reinstatement.

In addition, Ms. Gadbois referred to the provision in the sentencing order which reflects that in October 2012 Dr. Baker consented to the "continued suspension" of her medical license for the duration of her court-ordered probation. SX 3 at 4. To the extent that the sentence can be construed as an "order" that Dr. Baker's suspension continue, the State takes the position that the Superior Court does not have the lawful authority to bind the licensing or registration discretion of the Board or the Secretary.

In order that the record in this case be more complete, the State's Second Amended Complaint before the Board was admitted as SX 5. The Amended Complaint before the Secretary of State and Controlled Substance Advisory Committee was admitted as SX 6. After offering those exhibits, the State's attorney reiterated that the State contends that it is not

necessary to prove the multiple claims in the two admitted complaints on the record of this case because of the six felony counts to which Dr. Baker has pled guilty, and under which she has now been sentenced.

Findings of Fact

The notice of this hearing provided Dr. Baker with the date, time, place and subject matter of this hearing. It was mailed to Dr. Baker by the Division of Professional Regulation Administrative Hearing Unit by both certified and First Class mail in the normal course of Division business. The notice was mailed to Dr. Baker at the last and most current residential address which she had provided to the Board of Medical Licensure and Discipline in order to receive official communications. The certified copy of the hearing notice was returned to the Division as “unclaimed” and with the notation that the Postal Service was unable to forward it to another address. The First Class copy of the same hearing notice has not been returned to the Division as undeliverable. It is therefore presumed to have been received by Dr. Baker as a matter of law. In correspondence to the undersigned hearing officer mailed and received after the hearing, Dr. Baker admitted that she did in fact receive the First Class copy of the hearing notice.

I find the following facts have been proven by a preponderance of the evidence, and are not refuted in the record of this case. Yvette K. Baker, M.D. is or has been a licensee of the Board of Medical Licensure and Discipline. According to records maintained by the Board, Dr. Baker’s medical license was initially issued on September 18, 2001. Her license was suspended on July 27, 2010, and subsequently expired on March 31, 2011.

Dr. Baker has also held a Controlled Substance Registration (CSR) which permits her to write prescriptions for controlled substances. Her CSR was initially issued on September 20, 2002. It was suspended on July 21, 2010. It expired on July 30, 2011.

On or about January 18, 2012, Dr. Baker was arrested on 64 felony charges of health care fraud, obtaining a benefit by false representation, and making a false statement. SX 2 at 2. On October 23, 2012, with the advice of legal counsel, Dr. Baker entered a plea of guilty on six of those felony charges and was sentenced by the Delaware Superior Court.

The sentence of the Court, as later amended in December 2012, imposed upon Dr. Baker a lengthy period of incarceration and probation under the supervision of the Department of Corrections, substance abuse and mental health evaluations, and imposition of criminal fines, civil restitution, court fees and other assessments in the total amount of \$292,230.24. According to the terms of Dr. Baker's amended sentencing order as issued by the Superior Court, and unless that order is further amended, Dr. Baker will be on probation until approximately December 2017.

Dr. Baker did not attend the hearing and did not contest any of the facts set forth above. A recommendation regarding professional discipline based on this record was sent up to the Board of Medical Licensure and Discipline by the undersigned on or about May 14, 2013. Dr. Baker did receive a copy of that recommendation.

On the first two pages of the May 2013 licensure recommendation to the Board, I endeavored to summarize the allegations of the State's professional complaint in 12 numbered paragraphs. Dr. Baker did receive a copy of the recommendation in the mail. In an undated letter to the Division of Professional Regulation mailed by Dr. Baker at some point after May 14, 2013, and well after the hearing had concluded, Dr. Baker apparently sought to refute the

summary of the State's allegations set forth in the 12 numbered paragraphs of the recommendation. A copy of her "response" was forwarded to the Board of Medical Licensure and Discipline for its consideration in the deliberations concerning discipline of her medical license.

Unfortunately, only the 12th numbered paragraph summarizing the claims in the State's second amended complaint concerned the criminal charges to which Dr. Baker entered guilty pleas in October 2012. Her purported refutation or response to the other 11 summary paragraphs are therefore irrelevant to the outcome here because the State voluntarily reduced the scope of this case. I make no findings regarding any of the information provided in Dr. Baker's post-hearing unsworn statement. Though Dr. Baker's letter is unsworn and though her statements about the criminal case were not subject to cross-examination during the April 10, 2013 hearing, I will repeat her contentions regarding the criminal matter here verbatim:

"The 'guilt' that I pled to for Medicaid fraud was concerning a question on the Medicaid application, that went something like this, 'is there any reason why you should not be excluded from seeing Medicaid patients?' and I answered 'no.'

"I left Little Rock, Arkansas in July of 1998 and a letter arrived (this is in evidence for the case) in October of 1998, long after I had left the state. The prosecution felt I 'should' have known about this inability to see Medicaid patients, but I did not. There was (sic) 40 felony counts for giving narcotics without documentation. The Medicaid fraud division had seized all the Medicaid charts in their investigation, and gave me back copies. I knew I had charts on each patient and my attorney went to the storage and found the 40 charts that were reportedly nonexistent and the charges were withdrawn 40 felonies. That was the only reason stated, that I had answered no reason to not see Medicaid patients and I couldn't. I could not find my name on the list of physicians that could not see Medicaid physicians (sic), when I looked. So the fraud concerns that answering of the question incorrectly, but without intent, even though I was forthcoming about the defaulted school loan, which the reason for the my (sic) inability to see Medicaid patients. I was honest about the aspect that I was aware of. I informed the

Board about the school loan and informed Medicaid and each insurance company that I applied to about the defaulted loan, up front.

“I attempted to have the charges reversed by contacting the Innocence Project of New York and found out that they only work on reversing those cases involving DNA. I am still attempting to find an attorney that will take my case, secondary to financial difficulties at this time.”

Conclusions of Law

The notice of this hearing provided Dr. Baker with the date, time, place and subject matter of the proceedings. It otherwise comported with legal requirements for hearings before the Secretary of State and the Controlled Substance Advisory Committee. The notice was mailed to Dr. Baker at the last and most current address which she had reported to the Board of Medical Licensure and Discipline as the place where she would receive communications from the Board and the Division of Professional Regulation.

Though the certified copy of the hearing notice was returned to the Division with the notation that the Postal Service was unable to deliver it, the First Class copy of the hearing notice was mailed to Dr. Baker at her reported address in the normal course of Division business and was not returned by the Postal Service as undeliverable. Under the “mailbox rule”, a presumption therefore arises that Dr. Baker did in fact receive the hearing notice. In a letter dated April 25, 2013, Dr. Baker admitted that she did receive the hearing notice. RX 1.

The registration of physicians and others involved in making controlled substances available by prescription to members of the public under Delaware law for valid and justified medical purposes is governed by the Uniform Controlled Substances Act, 16 *Del. C.* Ch. 47. Though the Act does not contain a “purposes” section *per se*, the aims of the Controlled

Substance Registration program under the Act are perhaps best set forth at 16 *Del. C.* Sec. 4733.

That section provides that the Secretary of State shall register individuals such as physicians, among others, and provide them with the lawful authority to prescribe controlled substances for proper medical purposes unless the Secretary deems registration to be inconsistent with the public interest. *Id.* at Sec. 4733(a). In making the “public interest” determination, the Secretary is to consider whether the CSR applicant will, *inter alia*, (1) maintain effective controls against diversion into other than legitimate medical channels, (2) comply with applicable state and local laws, (3) be free of conviction under federal and state laws relating to controlled substances, and (4) “any other factors relevant to and consistent with the public health and safety”. *Id.* These are all valid means and ends rationally related to the legitimate State interest in controlling the activities and identities of those who are entrusted with the authority to prescribe controlled substances.

The State’s Second Amended Complaint makes a substantial number of allegations against Dr. Baker which, if true, would form a basis for restrictions upon or revocation of her authority to prescribe controlled medications. Many of those allegations and the related statutory or regulatory provisions which the State alleges that she violated are no longer relevant to this discussion as the State has chosen to rely solely on her 2010 felony convictions for health care fraud and misdemeanor convictions for false representation and making a false statement.

In the Second Amended Complaint the State contends that Dr. Baker’s felony and misdemeanor convictions should result in revocation of her CSR based on two provisions in the Uniform Controlled Substances Act. The Act lists those factors which the Secretary shall

consider in making the determination that a particular CSR should be suspended or revoked.
16 *Del. C.* §4734(a).

The State first contends that Dr. Baker has violated 16 *Del. C.* §4734(a)(3) by virtue of her criminal convictions in 2010. SX 5 at para. 49. That section states that the Secretary shall consider “any convictions of the registrant under any federal and state laws relating to any controlled substance.”

When the State elected to truncate the complaint in this case, it may have unwittingly compromised this claim. Dr. Baker clearly entered a plea to felony Health Care Fraud and misdemeanor Obtaining a Benefit by False Pretense and misdemeanor Making a False Statement SX 4. But there is no evidence in this case which shows whether any of those claims of fraud or false representation “related to any controlled substance”. Dealing in controlled substances is not a necessary element of any of those provisions in the Delaware Criminal Code. Presumably the State could have introduced such evidence through entering the original charging documents or indictments against Dr. Baker, police or investigative reports, or a transcript of a plea proceeding or a plea colloquy between Dr. Baker or her criminal defense counsel on the one hand and the sentencing Judge or criminal prosecutor on the other.

Without that sort of more detailed evidence, I am simply left to speculate as to whether the criminally fraudulent misconduct for which Dr. Baker received a substantial sentence was related to securing or prescribing controlled substances, or something else. Consequently, I recommend dismissal of the claim that the Secretary may base CSR discipline on a violation or violations of 16 *Del. C.* §4734(a)(3).

The State also alleges a violation of 16 *Del. C.* §4734(a)(7). That is the “catchall” provision in Sec. 4734(a). The section states that the Secretary shall also consider “any other factors relevant to and consistent with the public health and safety.” It is in the discretion of the Secretary to make reasonable determinations as to “other factors” which may be relevant to issues of the public health and safety.

As noted above, this administrative hearing resulted not only in the instant recommendation but a separate recommendation to the Board of Medical Licensure and Discipline. The same nucleus of facts has driven both recommendations.

The Board of Medical Licensure and Discipline has now taken final action on the recommendation of the undersigned hearing officer with regard to Dr. Baker’s medical license. In my opinion the Secretary of State may be informed by that final action. The Board is the public body in Delaware to which the important public medical licensure function has been delegated by the legislature.

The final order of the Board of Medical Licensure and Discipline is dated September 10, 2013. A copy of that order has been admitted into the record of this case as Board Exhibit 1 (“BX 1”). In that order the Board accepted the recommendation of the undersigned hearing officer and permanently revoked Dr. Baker’s medical license by unanimous vote. BX 1 at 4.

More importantly, in its order the Board made several findings which, in my opinion, have a bearing on the exercise by the Secretary of administrative discretion under 16 *Del. C.* §4734(a)(7). The Board rejected Dr. Baker’s exceptions to the recommendation. The Board found no reason for Dr. Baker, a psychiatrist, to be prescribing high numbers of narcotic pain medications. The Board further found that Dr. Baker “has yet to recognize the seriousness of her actions” almost a year after she entered her guilty pleas. Based on those findings and the

conclusions reached in the recommendation, the Board permanently revoked Dr. Baker's medical license. BX 1.

In my opinion the Board's final order contains findings and conclusions which constitute "other factors" which should be relevant in the Secretary's deliberations. If "other factors" are "relevant to and consistent with" considerations of the public health and safety, they may be considered in deciding whether to revoke, suspend or otherwise discipline a CSR. The sheer amount of the Superior Court order of restitution - \$173,958 - against Dr. Baker and in favor of certain public agencies is evidence of the substantial impact of her fraudulent conduct on the public. The additional criminal fine - \$100,000 - coupled with incarceration and lengthy periods of criminal probation constitute evidence of the seriousness of that harm and Dr. Baker's breach of public trust as assessed by the Superior Court. The State originally charged Dr. Baker with 64 counts of fraudulent and criminal misconduct. Hence, it is a fair inference that her conduct was not an isolated event but constitutes an intentional pattern of deceit. Her fraudulent acts involved members of the public and victimized public agencies.

Dr. Baker did not attend the hearing. Hence, she did not present any mitigation of her conduct while under oath and subject to cross-examination by the State. After the hearing (of which she had notice) she submitted a letter which the Board dismissed as evidence that Dr. Baker "has yet to recognize the seriousness of her actions". Though she entered her plea of guilty with the advice of counsel, and though the Superior Court found her plea to be free and voluntary, in her letter of "exceptions" she is generally remorseless and states that she continues to seek out an attorney who will help her "have the charges reversed".

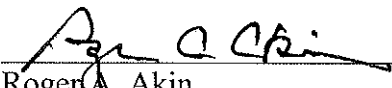
In my opinion the recent action by the Board of Medical Licensure and Discipline constitutes "other factors" which should be considered by the Secretary of State in making a

determination whether to discipline Dr. Baker's CSR. Those factors, in my view, have a direct bearing on the public health and safety by virtue of Dr. Baker's use of fraudulent acts in her practice of medicine.

Due process has been afforded in these proceedings.

Recommendation

Based on the relevant evidence in this case and the findings of fact and conclusions of law set forth above, it is the recommendation of the undersigned hearing officer that Controlled Substance Registration MD4124 issued to Yvette K. Baker in or about September 2002, suspended in or about July 2010 and expired in or about July 2011 be permanently revoked by the Secretary of State. It is further recommended that a copy of the final order of the Secretary of State in this matter be served personally or by certified mail, return receipt requested, upon Yvette K. Baker. It is recommended that the final order of the Secretary constitute a public disciplinary action reportable to the national practitioner data bank and to the Drug Enforcement Administration, with a copy of this recommendation attached.



Roger A. Akin
Chief Hearing Officer

Dated: September 19, 2013

Any party to this proceeding shall have twenty (20) days from the date on which this recommendation was signed by the hearing officer in which to submit in writing to the Delaware Secretary of State and/or The Controlled Substance Advisory Committee any exceptions, comments, or arguments concerning the conclusions of law and recommended penalty stated herein. 29 Del.C. §8735(v)(1)d.