

**STATE OF ILLINOIS  
DEPARTMENT OF FINANCIAL AND PROFESSIONAL REGULATION  
DIVISION OF PROFESSIONAL REGULATION**

DEPARTMENT OF FINANCIAL AND	)	
PROFESSIONAL REGULATION	)	
of the State of Illinois,	)	
	)	
Complainant,	)	
	)	No. 2015-00909
v.	)	
	)	
Slawomir J. Puskarski, M.D.,	)	
License Nos. 036.091684 and 336.058786	)	
	)	
Petitioner.	)	

**ORDER**

This matter comes before the Director of the Division of Professional Regulation of the Department of Financial and Professional Regulation of the State of Illinois (“Department”), following Slawomir J. Puskarski’s (“Petitioner”) Petition for Restoration, Administrative Law Judge, Daniel Faermak’s (“ALJ”), Report and Recommendation to the Director and the Illinois Medical Disciplinary Board’s (“Board”) Findings of Fact, Conclusions of Law, and Recommendation to the Director, and the Department’s Motion for Action Contrary, and Petitioner’s subsequent Response to the Department’s Motion for Action Contrary.

Between November 2011 and July 2012, Petitioner engaged in a scheme to defraud the Federal government for his own personal profit. In the course of his medical practice, he met with an undercover FBI agent, who claimed to be a Polish-speaking permanent resident of the United States seeking United States citizenship. Petitioner intentionally and falsely completed a Form N-648 for the agent, which exempts naturalization applicants from the English and civics exam portions of the application. Petitioner manufactured fake medical records for the agent, claiming that the agent had been a patient of his for over two years and falsely diagnosed the agent with a host of non-existent

ailments. Petitioner had never actually done so much as perform an exam on the agent. In exchange for falsifying records, the agent paid Petitioner thousands of dollars.

Expanding the fraud beyond his own practice, Petitioner then referred the agent to two individuals: one who would draft documents necessary to apply for naturalization and obtain a medical waiver of the requirements of the naturalization exam and one who would create a fictitious record of prior medical care for the agent. When the FBI confronted him with their findings, Petitioner admitted that he done similar acts on numerous occasions over the course of the previous ten (10) years. Petitioner was not investigated, indicted, nor convicted of these other offenses he disclosed to the FBI.

This fraudulent conduct was so egregious and violated the public trust to such a degree that the Department deemed him an immediate threat to the public health, safety, and welfare. On June 2, 2015, the Department filed a Complaint and Petition for Temporary Suspension alleging that Petitioner had violated 225 ILCS 60/22 (a)(3) when he was charged with knowingly attempting to procure, contrary to law, the naturalization of any person, in violation of 18 U.S.C. Section 1425(a) and the Director of the Division of Professional Regulation (“Director”) signed an Order temporarily suspending Petitioner’s physician and surgeon license on the same day. On October 1, 2015, Petitioner plead guilty to attempting to procure, contrary to law, the naturalization of any person, a felony in violation of 18 U.S.C. Section 1425(a), in the United States District Court of Northern Illinois. Petitioner was sentenced to two (2) years of probation, required to pay a \$10,000 fine, return the \$2,520 fee he charged the agent for the medical records, and pay a \$100 assessment fee. Additionally, he was ordered to complete 250 hours of community service.

On April 15, 2016, Petitioner entered into a Consent Order with the Department wherein his license was indefinitely suspended. Less than a year later, on December 22, 2016, Petitioner filed a Petition for Restoration and on August 24, 2017, the matter proceeded to a Formal Hearing.

On October 3, 2017, the ALJ presented his Findings of Fact, Conclusions of Law, and Recommendation to the Board. In his Report, the ALJ recommended that Petitioner's license be reinstated to active status.

On November 15, 2017, the Board adopted the ALJ's Findings of Fact, Conclusions of Law, and Recommendation to the Director to reinstate Petitioner's license to active status.

On November 28, 2017, the Twenty (20) Day Notice was sent to Petitioner informing him of the ALJ and Board's Findings of Fact, Conclusions of Law, and Recommendations to the Director.

On December 15, 2017, the Department filed a Motion for Action Contrary to the Recommendation of the Disciplinary Board and/or for Rehearing/Reconsideration ("Motion for Action Contrary").

On January 16, 2018, Petitioner filed a Response to the Department's Motion for Action Contrary to the Recommendation of the Disciplinary Board and/or for Rehearing/Reconsideration ("Petitioner's Response").

In this case, the burden is on Petitioner to "demonstrate[e] by a preponderance of the evidence that he is sufficiently rehabilitated to warrant public trust" to have his license restored. ALJ Report at 5. The Rules for the Administration of the Medical Practice Act, 68 Ill. Admin. Code 1285.255, provide guidance in determining whether a petitioner seeking restoration has been sufficiently rehabilitated and states as follows:

- a) Upon written application to the Disciplinary Board for restoration of a license or certificate, or for any other relief, the Disciplinary Board shall consider, but is not limited to, the following in determining if the person is to be deemed sufficiently rehabilitated to warrant the public trust:

1. The seriousness of the offense that resulted in the disciplinary action being considered or being taken;
2. The length of time that elapsed since the disciplinary action was taken;
3. The profession, occupation and outside activities in which the applicant has been involved;
4. Any counseling, medical treatment, or other rehabilitative treatment received by the applicant;
5. Continuing medical education courses or other types of courses taken to correct the grounds for the disciplinary action being considered or having been taken;
6. The results of a clinical competency examination, designated by the Disciplinary Board, and paid for by the petitioner;
7. Written reports and oral testimony by peer review committees or other persons relating to the skill, knowledge, honesty, integrity and contriteness of the applicant;
8. Restitution to injured parties;
9. Future plans of the applicant;
10. Involvement of the applicant's family and friends in his or her rehabilitation process;
11. A written report of a physical or mental examination given by a physician selected by the Disciplinary Board and paid for by the person being examined;
12. Any other information evidencing rehabilitation that would bear upon the applicant's request for relief or restoration of a license;
13. Whether the order imposing sanctions was appealed and, if so, whether a reviewing court granted a stay or delay of imposition of the sanction;
14. The date and disposition of any other petition for restoration filed since the last sanction was imposed; and
15. Whether there has been compliance with any probationary terms imposed.

Petitioner's main contentions are that he has met his burden to show he has been rehabilitated based on the fact that his Federal court probation was sufficiently completed; his probation was reduced from two (2) years to one (1) year; he completed at least 50 hours of continuing medical education ("CME") coursework; he took the Ethics and Boundaries Assessment Services ("EBAS") Ethics and Boundaries Essay Examination; and he has no other criminal history or disciplines with the Department on his record. Petition for Restoration at 3.

Among the factors the ALJ considered for his Recommendation were the seriousness of the offense; time passed since the offense; time it took Petitioner to complete his criminal sentence; duration of his suspension prior to filing for restoration; any counseling, medical, or other

rehabilitative treatments Petitioner sought during this time; and whether Petitioner continued to volunteer after completing his criminal sentence. ALJ Report at 10.

The Department, in its Motion for Action Contrary, argued that (i) the Director has the authority to issue an Order in Contravention of the Board's Recommendation; (ii) Petitioner failed to establish that he is sufficiently rehabilitated to warrant the public trust; and (iii) Petitioner failed to meet the necessary burden of proof to establish that he is sufficiently rehabilitated.

Petitioner's Response to the Department's Motion for Action Contrary contended that the Board's Recommendation should be adopted because (i) substantial justice has been done in this case and (ii) Petitioner has proven by a preponderance of the evidence that he has been sufficiently rehabilitated to warrant the public trust.

Petitioner claims that he has undergone a transformation based on taking the EBAS exam, volunteering, making amends with his colleagues, and appreciating the gravity of his conduct. Petitioner's Response at 13. I find that this is not sufficient to meet Petitioner's burden of proof. When looking at the totality of the circumstances and weighing the guiding factors to be considered with regard to rehabilitation, I find that Petitioner has not shown by a preponderance of the evidence that he has been sufficiently rehabilitated to warrant the public trust for the following reasons.

**I. The Offense was Extremely Serious and Directly Impacts the Public Trust**

As the ALJ notes in his Report, the practice of medicine, "requires honesty and integrity of the highest degree." ALJ Report at 5. Petitioner's conviction for "attempting to procure the Naturalization of any person, is an extremely serious offense and undermines the very purpose of the Act and violates the ethical tenants of practicing medicine." *Id.* at 10. The ALJ aptly noted that "Respondent's actions reduced the public trust in and reliance on physicians and the related professionals who work with them to the detriment of the health and safety of the people of Illinois."

*Id.* The behavior was, in fact, so egregious the Department found Petitioner to be an immediate threat to the public health, safety, and welfare when it temporarily suspended his ability to practice medicine.

While Petitioner correctly argued that the seriousness of the offense does not outweigh the other fourteen factors that are considered by the Department when assessing rehabilitation, he asserted that his conduct was not as serious as other conduct and “should be viewed in the context of other suspensions.” Petitioner’s Response at 12. This is wholly unpersuasive and seems to be a veiled attempt to shirk responsibility for defrauding the Federal government and undermining the fundamental tenants of the patient/doctor relationship.

Petitioner has repeatedly failed to demonstrate an appreciation of the seriousness of his offense. He failed to accept full and complete responsibility for his actions when he deflected and minimized his role in the scheme, as he repeatedly stated that he did not falsify but rather “overexaggerated” a diagnosis. Transcript at 171. Petitioner attempted to justify his actions rather than accept responsibility when he asserted that he believed, at the time of the offense, that he was helping people and not breaking the law. *Id.* at 154. Petitioner was also inconsistent in his testimony concerning his FBI confession. He stated that he was truthful and upfront with the FBI, but that he also was stressed during the interview and may have exaggerated what he did. *Id.* at 169-171.

The seriousness of Petitioner’s offense coupled with his repeated inability to provide a concise, immutable recitation of his role in the offense, and inability to accept complete responsibility for the violation of the public trust leave serious doubts as to Petitioner’s contention he has been rehabilitated.

## **II. Length of Time was Not Sufficient**

The ALJ expressed concern regarding the lack of time between the conviction and the filing of the Petitioner for Restoration. Petitioner filed his Petition for Restoration a mere 70 days after

completing his criminal sentence and less than a year after Petitioner's Consent Order had been in effect. ALJ Report at 10. Petitioner ultimately had his probation shortened after the judge denied early termination of parole the first time. Transcript at 183. At the time Petitioner filed his Petition for Restoration, he "claim[ed] he had been rehabilitated." ALJ Report at 10.

In the time that Petitioner has been suspended, he rushed to pay his restitution and completed the 250 community service hours mandated by his probation in about four (4) months. While Petitioner did not did not attend any counseling sessions, medical treatment, or other forms of rehabilitative treatment, he apparently had time to study and sit for the EBAS exam, take CME courses, play tennis, spend time with his family, and enroll in law school. Although Petitioner recognized that he "[has] lots of time on [his] hands now," and if he could, he would play tennis "every day if [he] had a buddy," (Transcript at 185), he presented scarce evidence that he has dedicated that free time to volunteering beyond his court ordered community service<sup>1</sup> or sought rehabilitative treatments. ALJ Report at 10-11.

Petitioner's behavior does not appear to be that of one who is legitimately concerned with recognizing his wrong doing and rehabilitating himself but rather one of that is more concerned with trying to return to the status quo as quickly as possible.

### **III. Oral Testimony did not Demonstrate Skill, Knowledge, Honest, Integrity or Contriteness of Petitioner**

The testimony of the personal witnesses Petitioner chose each lacked sufficient knowledge of Petitioner's wrongdoing and did not provide compelling evidence of his rehabilitation. The ALJ aptly noted that the "witnesses spoke primarily to their past interactions with Petitioner, his remorse for his actions and what little knowledge they had regarding his criminal conviction." ALJ Report at 11. He

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<sup>1</sup> The ALJ noted that while the Petitioner presented evidence of additional community service he gave that evidence "little weight as the volunteer hours are handwritten on an otherwise blank piece of paper that the Department attorney cannot cross-examine." ALJ Report at 11.

goes on to note that while all of the witnesses are “firm in the belief that Petitioner will never offend again,” none of them “are fully aware of the facts regarding Petitioner’s criminal activity.” *Id.*

Petitioner offered conflicting accounts as to how much he disclosed to the witnesses but essentially conceded that that they either did not ask him many questions during their conversations or that they found out from outside sources, such as his attorneys or news outlets, the extent of his involvement in the wrongdoing. Petitioner admitted that the conversations “weren’t that thorough.” Transcript at 187. One witness admitted that he learned of the events in question through “rumors” and was later told “by his attorneys.” *Id.* at 29. The witness went on to state that Petitioner’s attorneys told him what Petitioner plead guilty to and how he was sentenced, “but I’ve forgotten.” *Id.* at 30. The witness later admitted that he was “surprised” to learn that the events in question occurred at the time Petitioner had been “chair of the department, and the chair in the peer-review committee.” *Id.* at 38.

Another witness stated that she learned of Petitioner’s fraudulent behavior after a “coincident[al]” run in at a mutual friend’s “party.” *Id.* at 57. When pressed about the details of what she knew regarding the details of Petitioner’s behavior, her answers were vague and uncertain:

Q: So how many patients did he create fake records?

A: I don’t know exactly, but I know it’s a couple.

Q: Did he tell you how long he was creating fake records?

A: You know, I didn’t ask that.

Q: I understand. Did he tell you that?

A: No.

Q: Did he tell you how much money he got paid from each patient?

A: No.

Q: Did you ask him?

A: No.

Q: Do you know if he even got paid?

A: For the patient that was convicted, yes.

Q: How much, do you know?

A: I don’t know. Those are personal things that I don’t ask.

*Id.* at 59.



Petitioner's final witness displayed a similar lack of detailed knowledge and admitted he has never worked with Petitioner and only knew him as his "tennis buddy." *Id.* at 115. When pressed about his knowledge of Petitioner's fraudulent behavior and said that he learned about Petitioner's conviction during breaks in their tennis games. *Id.* at 122-123.

As a whole, the witnesses failed to provide anything more than mere generalizations that Petitioner is remorseful and has reformed his ways with the exception of his tennis partner who claims he is now an honest doctor because he has "never seen him cheating . . . or stealing the point . . . when the ball is sort of around the line or across the line" during their tennis matches. *Id.* at 120.

Petitioner alleged that he did not "hide his conduct or retreat from the world," but accepted responsibility. Petitioner's Response at 17. However, it was clear from the witness testimony that the individuals he selected did not have a sufficient understanding of Petitioner's conviction or discipline with the Department. The fact that none of the witnesses were provided with the full and complete account with what took place devalues their testimony that Petitioner is an honest doctor who is regretful for his decisions and not likely to engage in recidivism. Additionally, it undermines Petitioner's contention that he has made "amends to his colleagues through his candor and remorse regarding his conduct." *Id.* at 13.

#### **IV. Petitioner's Family and Friends Have Not Been Involved in His Rehabilitation Process**

Petitioner's lack of candor with the witnesses also raises serious doubts about how involved his friends are in his rehabilitation process, as discussed above. In addition, Petitioner's own wife does not seem to know the severity or extent of Petitioner's wrongdoing despite being married to him and working with him in the same practice for the past twenty (20) years. Transcript at 76. She testified that she had no idea Petitioner had engaged in any wrongdoing until he was arrested. *Id.* at 80. She

still does not know the extent of fraud despite having worked and lived under the same roof, and only gleaned the details from the FBI report:

Q: Did you ask him the names of any of those five to eight patients, if you knew them, if you ever treated them?

A: No.

Q: Did you ask him how many years he was doing it?

A: He mentioned in the report ten years.

Q: Not mentioned in the report. Did you ask your husband, since he was arrested in 2014, how many years he was doing fake records and making fake diagnoses?

A: No, I didn't because I was reading the report and it was 10 years.

*Id.* at 98.

As previously stated, the witnesses were unable to adequately attest to the true character and ethics of Petitioner as they were unaware of the events that lead to Petitioner's federal conviction and subsequent license discipline. A relaying of Petitioner's vague statements of regret and an incomplete understanding of the full scope of Petitioner's conduct by these witnesses shows that he did not fully involve his friends in his rehabilitation process, bringing the sincerity of his contrition and understanding of the seriousness of his offense into question.

### **Conclusion**

The determination of each case does not depend on the outcome of other cases before the Department. Similarly, no one factor for consideration outweighs all others. The Department must assess and weigh all relevant factors to determine if Petitioner has shown by a preponderance of the evidence that he has been sufficiently rehabilitated to warrant the public trust. In this case, Petitioner has not met that burden that he is sufficiently rehabilitated and should not be issued an unencumbered license at this time.

While the fact that Petitioner has successfully completed his criminal sentence, passed the EBAS exam, and taken CME courses weighs in his favor, it is questionable, at best, that he truly appreciates the scope and reverberating adverse impacts of his wrongdoing. It is appropriate for Petitioner's

license to stay in suspended status so he has additional time to consider his actions and truly acknowledge the effect those actions had on the medical community. As previously noted, trust is an essential tenant of the doctor/patient relationship and an ethical violation of this magnitude undermines the fundamentals of the profession.

Furthermore, Petitioner's desire to quickly return to serving the same population he had prior to his conviction is lofty, but it is a valid concern of the Department to consider the vulnerability of this population and the likelihood that Petitioner would reengage in similar behavior if reinstated. Therefore, the Department finds it appropriate that after the suspension has ended, Petitioner will be on probation indefinitely, obtain a practice monitor, and submit quarterly reports to the Department to effectively monitor Petitioner and guarantee that he will not return to his previous unethical and disruptive practices.

After a review of the record, I ADOPT in part and REJECT in part the Board's Findings of Fact to the extent that they are contrary to this Order. I ADOPT in part the Board's Conclusions of Law and REJECT the conclusion that Petitioner has demonstrated by a preponderance of the evidence that he has been rehabilitated. I REJECT the Recommendation as presented to reinstate Petitioner's license and I have determined that the Department's Motion for Action Contrary should be GRANTED in part and REJECTED in part and the Petitioner's Petition for Restoration should be GRANTED in part and DENIED in part.

Based upon the conclusions I have stated above, Petitioner's license should be restored effective six (6) months after the effective date of this Order and that upon restoration, Petitioner's license should be placed on indefinite probation with certain reporting requirements. Until such time as Petitioner's license is restored, his license should remain suspended.

NOW THEREFORE, I, Jessica Baer, Director of the Division of Professional Regulation of the Department of Financial and Professional Regulation of the State of Illinois, DO HEREBY FIND:

1. I have jurisdiction over the parties and the subject matter herein;
2. That Petitioner has not demonstrated by a preponderance of the evidence that he has been rehabilitated.

IT IS ORDERED that the Department's Motion for Action Contrary and Petitioner's Petition for Restoration are both GRANTED in part and DENIED in part.

IT IS FURTHER ORDERED that Petitioner's physician and surgeon license, License No. 036.091684, and controlled substance license, License No. 336.058786, shall be RESTORED effective six (6) months from the effective date of this Order upon meeting all other applicable requirements and once restored Petitioner's physician and surgeon license shall be placed on INDEFINITE PROBATION with the following terms:

1. Petitioner shall report to the Department within 30 days of license restoration his current address, current telephone number, and current email address; and his current place of employment, including address and telephone number, and name and contact information for his supervisor.
2. Beginning three (3) months following his license restoration and every three (3) months thereafter, Petitioner shall cause his supervisor to submit a quarterly report to the Department detailing Petitioner's job performance and activities and whether, in the opinion and observations of the supervisor, Petitioner has conducted himself in compliance with the law.
3. Beginning three (3) months following his license restoration and every three (3) months thereafter, Petitioner shall file a quarterly report with the Department detailing his practice activities and any rehabilitative actions he has taken.
4. Petitioner shall notify the Department of any change in employment, address, telephone number, or email address within five (5) days of the change.
5. Petitioner shall comply with all provisions of the Medical Practice Act, its Rules, and any other applicable laws.

6. All reports and notices shall include Petitioner's current address, current telephone number, current email address, and case number (2015-00909) and be filed in writing with the Department's Probation Compliance Unit at:

Illinois Department of Financial and Professional Regulation  
Division of Professional Regulation  
Attn: Probation Compliance Unit  
100 West Randolph Street  
5<sup>th</sup> Floor  
Chicago, IL 60601

Petitioner's licenses shall remain suspended until the effective date of his license restoration.

DATED THIS 15 DAY OF June, 2018.

DEPARTMENT OF FINANCIAL AND  
PROFESSIONAL REGULATION of the  
State of Illinois; Bryan A. Schneider, Secretary  
Division of Professional Regulation

  
JESSICA BAER  
Director

License Nos. 036.091684 and 336.058786  
Case No. 2015-00909

**STATE OF ILLINOIS  
DEPARTMENT OF FINANCIAL AND PROFESSIONAL REGULATION  
DIVISION OF PROFESSIONAL REGULATION**

<b>In RE the Petition for Restoration of</b>	)	
	)	
<b>Slawomir J. Puskarski, M.D.</b>	)	<b>No. 2015-0909</b>
<b>License No. 036-091684,</b>	)	
<b>CS License No. 336-058786</b>	)	
<b>Petitioner.</b>	)	

**FINDINGS OF FACT, CONCLUSIONS OF LAW  
AND RECOMMENDATION TO THE DIRECTOR**

Now comes the Medical Disciplinary Board (the “Board”) of the Department of Financial and Professional Regulation, Division of Professional Regulation of the State of Illinois (the “Department”) and, after reviewing the record in this matter, a majority of its members hereby make the following Findings of Fact, Conclusions of Law, and Recommendation to the Director:

**FINDINGS OF FACT**

The Board adopts the Findings of Fact contained in the October 3, 2017, Administrative Law Judge’s Report and Recommendation of the Administrative Law Judge Daniel Faermark (the “ALJ Report and Recommendation”) and incorporates the Findings of Fact herein.

**CONCLUSIONS OF LAW**

The Board adopts the Conclusions of Law contained in the ALJ Report and incorporates said Conclusions of Law herein.

**RECOMMENDATION TO THE DIRECTOR**

The Medical Disciplinary Board of the Department of Financial and Professional Regulation, Division of Professional Regulation of the State of Illinois, after making the above Findings of Fact and Conclusions of Law, concurs with the recommendation of the Administrative Law Judge Daniel Faermark. The Medical Disciplinary Board recommends that the Illinois

Physician and Surgeon License No. 036-091684 and Illinois Controlled Substance License No. 336-058786 issued to Slawomir J. Puskarski, M.D., be restored to active status.

DATED THIS 15th DAY OF November, 2017.

  
Sarita M. Massey, M.D., CHAIRPERSON,

  
MEMBER

  
MEMBER

MEMBER

MEMBER

  
MEMBER

MEMBER

  
MEMBER

  
MEMBER

Slawomir J. Puskarski, M.D., License No. 036-091684/336-058786  
Case No. 2015-0909

**STATE OF ILLINOIS  
DEPARTMENT OF FINANCIAL AND PROFESSIONAL REGULATION  
DIVISION OF PROFESSIONAL REGULATION**

IN RE: The Petition for Restoration of

Slawomir Puskarski, M.D.

License No. 036.091684

336.058786

Petitioner.

2015-00909

CLERK OF THE COURT

17 OCT -3 AM 9:24

ILLINOIS DEPARTMENT OF FINANCIAL AND PROFESSIONAL REGULATION

**ADMINISTRATIVE LAW JUDGE'S REPORT AND RECOMMENDATION**

This report is being filed with the Illinois Medical Disciplinary Board (hereinafter "Board") by Administrative Law Judge Daniel Faermak pursuant to 225 Illinois Compiled Statutes 60/35.

**BACKGROUND OF CASE**

Slawomir Puskarski (hereinafter "Petitioner") is the holder of a Certificate of Registration as a Physician and Surgeon, License No. 036.091684, issued by the Illinois Department of Financial and Professional Regulation (hereinafter "Department"). Petitioner is also the holder of a controlled substance license number 336.058786.

On June 2, 2015, the Department filed a Petition for Temporary Suspension and a Complaint. The Department's complaint alleges that Respondent violated 225 ILCS 60/22 (a)(3). On June 2, 2015, Respondent's license was temporarily suspended by Jay Stewart, then Director of the Department of Professional Regulation.

On October 1, 2015, Petitioner was found guilty, after a plea, of attempting to procure, contrary to law, the Naturalization of any person, a felony in violation of 18 U.S.C. Section 1425(a), in the United States District Court of Northern Illinois.

On April 15, 2016, in case 2015-00909, Petitioner entered into a Consent Order with the Department. Under the terms of the Consent Order, Petitioner's licenses were indefinitely suspended.

On December 22, 2016, Petitioner filed a Petition for Restoration seeking to restore his Physician and Surgeon license and controlled substance license to active status.



On August 24, 2017, a formal evidentiary hearing was held before Administrative Law Judge Daniel Faermark. Petitioner was present and represented by attorneys Sabrina Elliot and Tim Bingham. The Department was represented by attorney Vladimir Lozovski. There was no member present on behalf of the Board. The Administrative Law Judge received the complete record of this proceeding on September 18, 2017.

### **SUMMARY OF EVIDENCE**

#### **Exhibits**

The following exhibits of Petitioner were admitted into evidence:

- Exhibit 1:** Consent order in IDFPR case 2015-00909
- Exhibit 2:** Judgment in case 14-CR-00570-1
- Exhibit 3:** Release of Judgment Lien in case 14-CR-00570-1
- Exhibit 4:** Letter from Katrina Dean re: Completion of Community Service
- Exhibit 5:** Order Terminating Probation
- Exhibit 6:** EBAS Score
- Group Exhibit 7:** CME Certificates
- Group Exhibit 8:** Letters of support
- Exhibit 9:** Voluntary Surrender of Controlled Substances Privileges
- Exhibit 10:** Clearbrook Volunteer Log
- Exhibit 11:** Curriculum vitae of Petitioner
- Exhibit 12:** Letter from Kathleen Scheuing
- Exhibit 13:** Sentencing Transcript

The following exhibits of the Department were admitted into evidence:

- Group Exhibit A:** Temporary Suspension documents filed June 2, 2015
- Exhibit B:** Sentencing Memorandum, filed in case 14-CR-00570-1, September 17, 2015
- Exhibit C:** Government's position paper in case 14-CR-00570-1 filed September 21, 2015
- Exhibit D:** Judgment in Criminal in case 14-CR-00570-1 filed October 7, 2015
- Exhibit G:** IDFPR Consent Order dated April 15, 2016 Case 2015-00909
- Exhibit H:** Wisconsin Medical Examining Board Final Decision and Order dated June 14, 2016 and Stipulation dated May 27, 2016

### Witnesses

The following witnesses testified under oath in Petitioner's Case in Chief: Lucyna Puskarski, MD; Mitchell Glaser, MD; Amer Smajkic, MD; Janneth Jaramillo, MD; Petitioner.

The Department did not call any witnesses in its case in chief.

### **FINDINGS OF FACT**

The Administrative Law Judge makes the following Findings of Fact, based upon evidence presented at hearing:

Between November 2011 and July 2012, Petitioner met with an undercover law enforcement agent ("Individual A") on several occasions. Individual A, who claimed to be a Polish-speaking permanent resident of the United States, pretended to want to become a United States citizen. (Exhibit B).

Individual A asked Petitioner to complete a Form N-648, which excuses a naturalization applicant with certain health problems from two prerequisites for becoming a United States citizen: knowledge of (1) the English language and (2) United States history and civics. Although Individual A did not suffer from any mental or physical impairments that would warrant waiver of these prerequisites, Petitioner falsely completed a Form N-648 by stating that he had been treating Individual A for over two years; and that Individual A was suffering from vascular dementia with a depressed mood, major depressive disorder, malicious hypertension, coronary artery disease, headaches, and a learning impairment that prevented Individual A from learning English and United States history and civics. (Exhibit C). Petitioner had, in fact, never done an exam on Individual A. (Group Exhibit A). Petitioner was paid \$2,520 for his assistance. (Exhibit B).

Petitioner also referred Individual A to Jadwiga Safiejko who would draft documents necessary for Individual A to apply for naturalization and to obtain a medical waiver of the requirements of the naturalization exam. (Group Exhibit A). Petitioner also referred Individual A to Dr. Jerry Jakimiec who would create a fictitious record of prior medical care for Individual A. (Group Exhibit A).

Petitioner told law enforcement agents that he had signed a false Form N-648 on a handful of other occasions, five to eight, over the course of the previous ten years. However,

neither the Government nor the Probation Office allege that the offenses were part of a pattern of criminal conduct engaged in as a livelihood under the Federal Sentencing Guidelines. (Exhibit B). Petitioner was not investigated, indicted, nor convicted for the other 5-8 offenses he disclosed to the FBI.

On October 1, 2015, Petitioner was found guilty, after a plea, of attempting to procure the Naturalization of any person, a felony in violation of 18 U.S.C. Section 1425(a), in the United States District Court of Northern Illinois. Petitioner was ordered to pay a judgment in the amount of \$12,620, assessed \$100, fined \$10,000, and sentenced to probation for two years and was to complete community service. (Exhibit 2). Petitioner was released from the judgment due to paying it in full on October 30, 2015; he completed his community service and was terminated from probation on October 13, 2016. (Exhibits 3, 4, 5).

On April 15, 2016, in case 2015-00909, Petitioner entered into a Consent Order with the Department. Under the terms of the Consent Order, Petitioner's licenses were indefinitely suspended. (Exhibits 1, G).

Petitioner has taken and passed the Ethics and Boundaries Assessment Service (EBAS) Exam. (tr. pg. 153). Respondent has done volunteer work beyond the requirements of his mandatory supervised release. (Exhibits 9, 12).

### **ANALYSIS**

Pursuant to the Illinois Civil Administrative Code, 20 ILCS 2105/2105-10, the practice of the regulated professions, trades, and occupations in Illinois is hereby declared to affect the public health, safety, and welfare of the People of this State and in the public interest is subject to regulation and control by the Department of Professional Regulation. It is further declared to be a matter of public interest and concern that standards of competency and stringent penalties for those who violate the public trust be established to protect the public from unauthorized or unqualified persons representing one of the regulated professions, trades, or occupations. It is a general purpose of the Medical Practice Act of 1987 to protect the public health and welfare from those not qualified to practice medicine. Vine Street Clinic v. HealthLink, Inc., 222 Ill.2d 276, 295, 856 N.E.2d 422, 435 (2006), citing Ikpoh v. Department of Professional Regulation, 338 Ill.App.3d 918, 926, 789 N.E.2d 442, 449 (1st Dist. 2003).

The practice of medicine, in addition to skill and knowledge, requires honesty and integrity of the highest degree, and inherent in the State's power is the right to revoke the license of those who violate the standards it set. Kaplan v. Department of Registration and Ed., 46 Ill.App.3d 968, 975, 361 N.E.2d 626 (1st Dist., 1977).

It is Petitioner's burden to prove by a preponderance of the evidence that his license should be restored. 68 Ill. Admin. Code 1110.190(b). Therefore, it must be determined based upon the findings of fact, testimony and the evidence presented at formal hearing, whether Petitioner has demonstrated by a preponderance of the evidence that he is sufficiently rehabilitated to warrant the public trust.

### **Witness testimony**

#### **Mitchell Glaser, MD**

Dr. Glaser is a licensed psychiatrist in Illinois and has been licensed since 2000 or 2001. (tr. pg. 23). Dr. Glaser has never had his professional license disciplined. Dr. Glaser is a graduate of the University of Missouri at Kansas City and received his general psychology training at the University of Chicago, and did his residency and a child and adolescence fellowship at Northwestern University. (tr. pgs. 24, 15). Dr. Glaser currently works at Saints Mary and Elizabeth Hospital (Mary and Elizabeth) as chairman of the Department of Psychiatry and is Board Certified in general psychiatry. (tr. pg. 25).

Dr. Glaser knows the Petitioner from the University of Chicago when they were residents together and working at Mary and Elizabeth starting in 2004 or 2005. Petitioner recommended Dr. Glaser for his employment at Mary and Elizabeth. (tr. pg. 25, 36).

Dr. Glaser testified that Petitioner is a fine and good physician and he believes Petitioner to be ethical and never had any questions as to treatment provided or heard any complaints about Petitioner's treatment or care. (tr. pg. 28). Dr. Glaser believes that Petitioner is ethical and honest despite the felony conviction. (tr. pgs. 31, 32).

Dr. Glaser believes that Petitioner's license is suspended. (tr. pg. 28). Dr. Glaser testified that Petitioner told him that his license was suspended because he gave an excuse to a person so he wouldn't have to take the citizenship exam but does not know how many times Petitioner did this. (tr. pg. 29, 40). Dr. Glaser concedes that Petitioner acted unethically when he created fake records and fraudulent documents. (tr. pg. 45).

Dr. Glaser testified that since his conviction Petitioner is humbler and has expressed remorse. (tr. pg. 32). Dr. Glaser would refer patients to Respondent and would recommend him. (tr. pg. 33).

Janneth Jaramillo, MD

Dr. Jaramillo has been a family practice physician since 1997 and is board certified in family medicine. (tr. pgs. 48, 50). Dr. Jaramillo graduated from medical school in Ecuador in 1985 and moved to the United States in 1989 did her medical training at St. Elizabeth Hospital and then went into private practice. (tr. pgs. 49, 50).

Dr. Jaramillo knows Petitioner through the peer-review committee while they both worked at St. Elizabeth. (tr. pg. 50). Dr. Jaramillo has referred patients with mental problems to Petitioner. (tr. pg. 51). Dr. Jaramillo opines that Petitioner is a compassionate doctor, caring, responsible and, has good manners and has never heard any complaints about Petitioner and his patients are happy and satisfied. (tr. pg. 51).

Dr. Jaramillo know that Petitioner's license was suspended for creating fake records and knows he pled guilty to felony charges for creating fraudulent medical records. (tr. pg. 53.) Dr. Jaramillo learned about Petitioner's felony conviction 1½ to 2 years ago, when Petitioner told her. (tr. pg. 57). Dr. Jaramillo knows Petitioner pled guilty and was sentenced to probation for two years, 200 hours of community service, and fined. (tr. pg. 54). Dr. Jaramillo testified Petitioner did fraudulent acts a couple of times but does not know how long Petitioner created fake records or how much Petitioner got paid for creating the fake records. (tr. pg. 59, 65) Dr. Jaramillo did not know that Petitioner referred patients for fake diagnosis and that the referrals were wrong. (tr. pg. 64).

Dr. Jaramillo concedes that what Petitioner did was wrong, showed bad judgment, and had consequences but he is still a good doctor and that good doctors make mistakes and deserve second chances. (tr. pg. 55). Dr. Jaramillo does not believe Petitioner is a danger to society and would be beneficial to the community. (tr. pg. 70).

Lucyna Puszarska, MD

Dr. Puszarska and Petitioner have been married for 33 years and have two children together a 32-year-old and an 18-year-old. (tr. pg. 78).

Dr. Puszarska is a licensed psychiatrist in the State of Illinois (tr. pg. 73). Dr. Puszarska attended medical school at the University of Jagillionian in Krakow, Poland, finished her residency and fellowship at the University of Chicago. (tr. pgs. 73, 74). Dr. Puszarska currently works at River Edge Hospital and has been the Chief Medical Officer since 2009. (tr. pg. 75).

Dr. Puszarska knows that Petitioner pled guilty to one count of falsifying naturalization documents and that Petitioner falsified documents for a person who was not his patient. (tr. pg. 79). Dr. Puszarska testified that creating falsified medical documents is not honest but opined that Petitioner is an honest, ethical, and is remorseful. (tr. pgs. 83, 85, 89). Dr. Puszarska did not know of her husband's illegal activity prior to his arrest and was shocked when he was arrested. (tr. pgs. 79, 80, 82). Dr. Puszarska testified that she does not know how long Petitioner falsified documents, how many patient documents he falsified but it might be five to eight times but he falsified one document, or how much money Petitioner received (tr. pgs. 98, 99).

Dr. Puszarska testified that Petitioner received probation and his probation was finished after one year, had to pay a fee, and it was \$10,000, pay an assessment, had to return \$2,520 to the government, and complete 250 hours of community service. (tr. pg. 82). Dr. Puszarska testified that Petitioner currently volunteers at Clearbrook in the nursing office where he files papers and does whatever is asked of him. (tr. pg. 91).

Dr. Puszarska testified that Petitioner is one of less than ten Polish speaking psychiatrists in the Chicagoland area who accepted Medicare and Medicaid and that Petitioner wants to go back into private practice and take care of patients. (tr. pgs. 84, 92).

#### Amer Smajkic, MD

Dr. Smajkic has been an Illinois licensed child, adolescent, and general psychologist for 15 years. (tr. pgs. 112, 113). Dr. Smajkic graduated from the medical school at the University of Sarajevo in Bosnia-Herzegovina, did a fellowship and residency at Rush University Medical Center. (tr. pg. 113). Dr. Smajkic is Board Certified in psychiatry, and child and adolescent psychology (tr. pg. 114). Dr. Smajkic is currently in private practice and works a few hours at River Edge Hospital. (tr. pg. 114).

Dr. Smajkic has known Petitioner for five to six years and was introduced to Petitioner

by Petitioner's wife as they work together. (tr. pg. 115). Dr. Smajkic and Petitioner are tennis partners and play against each other weekly. (tr. pg. 122). Dr. Smajkic is testifying because he is a friend of Petitioner. (tr. pg. 117).

Dr. Smajkic testified that he has referred patients to Petitioner as Petitioner speaks Polish, that Petitioner has a good reputation in the field of psychology, has never had any complaints about Petitioner, and Petitioner works hard. (tr. pgs. 115, 116).

Dr. Smajkic knows about Petitioner's arrest and conviction and learned the circumstances surrounding the plea deal from Petitioner and knows that Petitioner pled guilty and his license was suspended due to the conviction, and that Petitioner did not go to prison and needed to do community service. (tr. pgs. 117, 118, 119). Dr. Smajkic believes Petitioner is an honest man who made a terrible mistake and has worked hard to correct it. (tr. pg. 124).

Dr. Smajkic does not know how many times Petitioner falsified records or how much money Petitioner received for falsifying the records. (tr. pg. 128).

#### Petitioner

Petitioner has been married for 33 years and has a 32-year-old daughter and an 18-year-old son both of whom live with him and his wife along with Petitioner's 83-year-old father in law. (tr. pg. 131). Petitioner emigrated to the United States in 1971 at the age of 10. (tr. pg. 133).

Petitioner attended Medical school at Jagiellonian University in Krakow, Poland from 1981 through 1987 and returned to the United States in 1988. (tr. pg. 132, 133). Petitioner completed his residency and fellowship at the University of Chicago. (tr. pg. 132).

Petitioner admits that he falsified a Federal Government document, falsified records, and took money to falsify the records. (tr. pg. 137). Petitioner regrets his criminal actions and admits that it was wrong to create fake records. (tr. pgs. 150, 174). Petitioner testified that on April 15, 2016 he entered into a Consent Agreement which indefinitely suspended his professional licenses. (tr. pg. 138). Petitioner has a professional license in Wisconsin that is also suspended. (tr. pg. 140, 141).

Petitioner was sentenced to two years-probation, which was reduced to one year, and finished all the conditions of his probation within the first four months and volunteers at Clearbrook and works in a nursing home office. (tr. pgs. 183, 184)

Petitioner voluntarily took and passed the EBAS professional responsibility exam and has completed all his continuing medical education. (tr. pg. 153, 156). Petitioner understands breaking the law is wrong but thought that helping someone was more important than breaking the law. (tr. pg. 154).

In attempting to clarify his remarks to the FBI, Petitioner denies that he falsified records five to eight times and made the statement because he was under stress and did not want to minimize the other times he may have falsified records. (tr. pg. 169).

If licensed, Petitioner wants to work at Mary and Elizabeth Hospital or Rivers Edge and would treat Medicare and Medicaid patients but admits he is currently prohibited from seeing those types of patients. (tr. pgs. 159, 160, 186).

#### Factors in Rehabilitation

The Rules for the Administration of the Medical Practice Act, 68 Ill. Admin. Code 1285.255, provide guidance in determining whether a petitioner seeking restoration has been sufficiently rehabilitated and state as follows:

a) Upon written application to the Disciplinary Board for restoration of a license or certificate, or for any other relief, the Disciplinary Board shall consider, but is not limited to, the following in determining if the person is to be deemed sufficiently rehabilitated to warrant the public trust:

1) The seriousness of the offense that resulted in the disciplinary action being considered or being taken;

2) The length of time that elapsed since the disciplinary action was taken;

3) The profession, occupation and outside activities in which the applicant has been involved;

4) Any counseling, medical treatment, or other rehabilitative treatment received by the applicant;

5) Continuing medical education courses or other types of courses taken to correct the grounds for the disciplinary action being considered or having been taken;

6) The results of a clinical competency examination, designated by the Disciplinary Board, and paid for by the petitioner;

7) Written reports and oral testimony by peer review committees or other persons relating to the skill, knowledge, honesty, integrity and contriteness of the applicant;

8) Restitution to injured parties;

9) Future plans of the applicant;

10) Involvement of the applicant's family and friends in his or his rehabilitation process;

11) A written report of a physical or mental examination given by a physician selected by the Disciplinary Board and paid for by the person being examined;

12) Any other information evidencing rehabilitation that would bear upon the applicant's request for relief or restoration of a license;



- 13) Whether the order imposing sanctions was appealed and, if so, whether a reviewing court granted a stay or delay of imposition of the sanction;
- 14) The date and disposition of any other petition for restoration filed since the last sanction was imposed; and
- 15) Whether these has been compliance with any probationary terms imposed.

Petitioner's conviction for attempting to procure the Naturalization of any person, is an extremely serious offense and undermines the very purpose of the Act and violates the ethical tenants of practicing medicine.

Petitioner and the Department entered into a Consent Order with the Department effective on April 15, 2016, which indefinitely suspended Petitioner's licenses. On October 13, 2016, Petitioner finished his criminal sentence and he has completed paying restitution. (Exhibit 5).

On December 22, 2016, 70 days after completing his criminal sentence, Petitioner filed a Petition for Restoration seeking to restore his Physician and Surgeon license to active status claiming he had been rehabilitated. Petitioner was suspended for 251 days before filing for restoration.

There are no counseling, medical treatment, or other rehabilitative treatments in the record. There are no written reports in the record by peer review committees relating to the skill, knowledge, honesty, integrity and contriteness of the applicant relating to Petitioner's rehabilitation post prison. There are no written reports in the record of a physical or mental examination given by a physician in the record. There are no results of a clinical competency examination in the record.

Petitioner has done volunteer work since having his license suspended and Petitioner has stayed current with his continuing medical education. (Group Exhibit 10). As is seen by the witnesses who testified on his behalf and the letters of support, Petitioner has the support of some colleagues, friends, and his wife moving forward.

It is not in dispute that Petitioner was not disciplined for his clinical decisions or patient care. The evidence of rehabilitation does not address Petitioner's medical competency, nor should it, as it is not at issue. Respondent's actions reduced the public trust in and reliance on physicians and the related professionals who work with them to the detriment of the health and safety of the people of Illinois. It is of great concern that despite knowing what he was doing was illegal and professionally unethical.

There is no doubt that the witnesses for Petitioner genuinely and deeply care for him and his well-being. However, this emotional connection does come with biases. In considering the evidence of rehabilitation from the witnesses, the Administrative Law Judge finds that the witnesses spoke primarily to their past interactions with Petitioner, his remorse for his actions, and what little knowledge they had regarding the criminal conviction. All the witnesses are firm in the belief that Petitioner will never offend again but none of the witnesses are fully aware of the facts regarding Petitioner's criminal activity.

According to his alleged statement made to the FBI, Petitioner was committing criminal acts using his medical license for ten years. However, Petitioner was charged with only creating false medical records and accepting payment for one individual on one occasion and there is no evidence in the record of any other illegal acts other than the one Petitioner was convicted of. The Administrative Law Judge considers Petitioner's statement to the FBI but gives it little weight as it is uncharged and unproven conduct. The Department did not call an FBI agent to impeach the Petitioner or give further explanation to Petitioner's statements. Also, the Department had this information when it entered into the Consent Order and gave the Petitioner the ability to apply for reinstatement of his license upon completion of his mandatory supervised release with no minimum time frame to petition for restoration.

Petitioner has submitted letters of support from friends, family, former patients, and colleagues which have been reviewed and considered by the Administrative Law Judge. (Group Exhibit 8). The Administrative Law Judge has considered the letters of support but gives Group Exhibit 8 little weight as the Department attorney was not able to cross examine the authors.

Similarly, the Administrative Law Judge gives Exhibit 10 little weight as the volunteer hours are handwritten on an otherwise blank piece of paper that the Department attorney cannot cross-examine. However, Petitioner did testify to his volunteer work and was subject to cross examination.

Petitioner successfully completed his probation on October 13, 2016. Petitioner has been off supervised release 315 days between the date his supervised release ended and the completion of the formal hearing. The suspension of Petitioner's medical license went into effect on April 15, 2016. Petitioner has been suspended 496 days between the date his suspension began and the completion of the formal hearing.

The factor most favorable to restoring Petitioner's license is his successfully completing his criminal sentence early and fully paying the court ordered judgment which also allowed him to petition for reinstatement of his licenses. It is also favorable that Respondent, of his own volition, took and passed the EBAS professional responsibility exam. The fact that Petitioner has done continuing medical education is not solely persuasive to show rehabilitation as continuing medical education must be completed prior to restoration but it does show Petitioner is committed to returning to his profession.

The issue to be addressed is whether the Petitioner has been sufficiently rehabilitated to warrant the public. Taking each issue separately provides clarity for the issue. Respondent was convicted of a serious offense resulting from a single action. The criminal proceedings make it clear that the federal judge believed probation was appropriate for the Petitioner as it was doubtful he would re-offend.

There is no litmus test to determine when a Petitioner is sufficiently rehabilitated to warrant the public trust. In this case, Petitioner has done everything possible to and Petitioner can do no more to show rehabilitation.

The Administrative Law Judge is concerned about the lack of time between the conviction and the potential reinstatement of Petitioner's licenses which suggests that these licenses be reinstated on probation. However, the Administrative Law Judge is unable to formulate meaningful terms of self-reporting probation which would monitor Petitioner regarding committing a similar offense.

### **CONCLUSIONS OF LAW**

Based on the above Findings of Fact, the Administrative Law Judge concludes as a matter of law the following:


1. The Illinois Medical Disciplinary Board has jurisdiction over the subject matter and the parties in this case.
2. Petitioner has demonstrated by a preponderance of the evidence that he has been rehabilitated and that his Medical and Controlled Substance licenses should be restored to active status.

**RECOMMENDATION**

Based on the above Findings of Fact and Conclusions of Law, the Administrative Law Judge recommends to the Illinois Medical Disciplinary Board that the Petition of Slawomir Puskarski for the Restoration of his Certificate of Registration as a Physician and Surgeon, No. 036.091684, and controlled substance license number 336.058786, be reinstated to active status.

Respectfully submitted:

Dated: 10/3/17

  
Daniel Faermark  
Administrative Law Judge

Puskarski 2015-00909  
License Nos. 036.091684  
336.058786