

July 27, 2005. This is the Board's Final Decision and Order in this case. In making this decision, the Board has considered the entire record, including the transcript of testimony and all the exhibits put into evidence before the ALJ, as well as the written Exceptions, the Administrative Prosecutor's Response to Exceptions, and the arguments of both parties at the oral Exceptions hearing. Because an argument about Dr. Lakner's current military status arose at the Exceptions hearing, the Board agreed to receive one additional document from Dr. Lakner. The Board received the document after the Exceptions hearing and has reviewed it, but it is not relevant to the central issues of this case.¹

II. CONSIDERATION OF EXCEPTIONS

The ALJ found Dr. Lakner guilty of making false statements on two applications for renewal of his Maryland medical license, making false statements on employment application forms, and being disciplined by the medical boards of other states for reasons which would be grounds for discipline in this State.

Dr. Lakner excepts to the ALJ's evidentiary findings and evaluation of the evidence at several points. One repeated contention is that the ALJ erred by not crediting Dr. Lakner's testimony. The Board disagrees with this argument and entirely adopts the ALJ's findings that Dr. Lakner's testimony was not credible. The ALJ was certainly not required to take Dr. Lakner's word for anything, considering some of the unlikely scenarios to which he testified and his documented, continent-wide, years-long history of making statements that were

¹ The Board invited submission of this one post-Exceptions document. Two additional post-Exception documents, letters containing legal arguments from attorneys, have not been considered, as the record has been closed and the attorneys have not in any case entered their appearances in this case.

less than completely accurate. The ALJ also had the opportunity to see Dr. Lakner testify before coming to the conclusion that his testimony lacked credibility. The Board adopts the credibility findings of the ALJ in this regard.

Another theme of Dr. Lakner's Exceptions is his contention that the Medical Board of California acted arbitrarily or in bad faith and wrongly denied Dr. Lakner a license. Even if this were true, however, it would not affect that fact that the Medical Board of California denied him a license, or that Dr. Lakner was obligated to report that denial to the extent that he was aware of it. The Board adopts the findings and inferences made by the ALJ with respect to the extent to which Dr. Lakner was aware of the actions of the Medical Board of California when filling out subsequent applications.

With regard to the reason for Dr. Lakner's ending of his employment with the Menninger Clinic and Mid-Atlantic Permanente Medical Group, there was some evidence on both sides of the case, but the Board adopts the credibility determinations and inferences drawn from the evidence by the ALJ. With regard to the Loma Linda Hospital application, the Board also adopts the credibility determinations and inferences drawn from the evidence by the ALJ.

Dr. Lakner argues that there is evidence that he did not lose his clinical privileges at some of these institutions. Such evidence, however, is not dispositive of the issue. Dr. Lakner was charged with falsifying applications in other respects, not with falsifying evidence with respect to his clinical privileges.

Dr. Lakner further argues as a factual matter that the Medical Board of California, in a letter to him of July 9, 2001, did not mention that the settlement

agreement was contingent upon approval by that board. Thus, he argues that his answers, which denied that any state had denied his license, were justified. The Board, however, adopts the ALJ's finding. This was a proposed settlement agreement only, subject to final approval by the Medical Board of California. The letter cited by Dr. Lakner itself states that a final settlement agreement "will be prepared." The California Administrative Law Judge described the settlement as a "proposed settlement subject to Board approval." (State's Exhibit 7J) And Dr. Lakner himself stated in civil court pleadings that the settlement was contingent upon approval by the California Board. (Respondent's Ex. 6) The Board agrees with the ALJ's inferences from the evidence that this was a proposed settlement only. The existence of a proposed settlement did not change the fact that his license had been denied on July 19, 2000 and that he was under a duty to report that on any relevant applications if asked.

The ALJ allowed Dr. Lakner to explain on the stand why he might have thought the California Board proceedings did not have to be reported on subsequent applications as a denial of licensure. The ALJ, however, did not allow Dr. Lakner to testify extensively about the merits of the California action. Dr. Lakner excepts to the ALJ's evidentiary ruling on this issue, but the Board agrees with the approach taken by the ALJ. The issue is not whether the California Board action was correct or legally justified. The issue was whether the California Board action occurred, and whether that denial of licensure was reportable on subsequent applications.

The Board does agree with Dr. Lakner's exception with regard to one of his answers on his application to the Finan Center. Dr. Lakner argues, and the Administrative Prosecutor apparently concedes, that there is an error in the dates with respect to one of the charges regarding Dr. Lakner's application there. The Nevada Board had filed a complaint against Dr. Lakner on June 2, 2001 for falsifying his application for renewal in that state. The Nevada Board, however, did not finally revoke his license until December 19, 2001. When Dr. Lakner filed his application with the Finan Center in Maryland on December 10, 2001, he was subject to the Nevada complaint, but his medical license had not yet been finally revoked in Nevada.

Two of the charges with respect to the Finan Center were that Dr. Lakner falsified Questions 16 and 18 of the Finan Center application by intentionally failing to report that he had been revoked in Nevada. See Amended Charges # 49 and 51. The ALJ made a finding to this effect regarding Question 16 (finding # 31), but this finding was incorrect. Also incorrect was the corresponding discussion of the Nevada revocation on page 20 of the ALJ's Proposed Decision. Dr. Lakner did not falsify Questions 16 or 18 *in that respect*, because he had not been revoked in Nevada at the time he made that statement on his Finan Center application. Dr. Lakner did, however, falsify his application to the Finan Center in all of the other ways and for all of the other reasons listed by the ALJ, and the Board adopts the ALJ's findings and all the inferences the ALJ made with respect to the Finan Center application in every other respect.

The Board notes that Dr. Lakner also apparently falsified his answer to the Finan Center's Questions 16 and 18 in yet another respect related to his Nevada experience. Question 16 also asked whether there were any "currently pending challenges to any professional licensure or registration?" Question 18 asked whether he had been "the object of disciplinary action." Dr. Lakner answered "no" to this part of these questions also, despite the fact that Nevada had already issued disciplinary charges against him. The ALJ made no findings on the issue of Dr. Lakner's falsification of his answer to Questions 16 and 18 with regard to the *pending* disciplinary charges against him in Nevada. Although this could be a significant issue in an appropriate case, the Board declines to make its own findings of fact or to remand for proposed findings of fact on this one issue. In the light of the numerous other false or deceptive answers which Dr. Lakner made on numerous applications, findings on these additional factual issues would have no effect one way or the other on the Board's final disposition in this case.

The Board has considered all of the other Exceptions argued by Dr. Lakner but finds them to be without merit.

In the Response to Respondent's Exceptions To Proposed Decision of the Administrative Law Judge, the State argues convincingly that the ALJ should have found that Dr. Lakner was bound by his judicial admissions that he had also been terminated from Yale University and Middlesex Hospital. The Board will not reach this issue, however, because it was raised before the Board not in an Exception but only in a footnote to a Response to Exceptions and, more

importantly, because additional findings of deception on Dr. Lakner's part based on Yale University or Middlesex Hospital would not change the outcome of this case.

III. FINDINGS OF FACT

The Board adopts all of the findings of fact proposed by the ALJ, except the second sentence of finding # 31, as is explained in the Consideration of Exceptions section of this decision. (The Administrative Law Judge's October 29, 2004 Proposed Decision is incorporated by reference into this Final Decision and Order and is appended as Attachment A.) The Administrative Prosecutor met her burden of proving these facts by a preponderance of the evidence. The Board also notes that the Administrative Prosecutor, although not required to do so, proved all of these facts by the higher standard of clear and convincing evidence.

IV. CONCLUSIONS OF LAW

The Board adopts the conclusions of law proposed by the ALJ. Dr. Lakner violated Md. Health Occ. Code Ann. § 14-404 (a) (1) by fraudulently or deceptively obtaining or attempting to obtain a license; § 14-404 (a) (3) by committing unprofessional conduct in the practice of medicine; § 14-404 (a) (11) by willfully making or filing a false report in the practice of medicine; and § 14-404 (a) (36) by willfully making a false representation when seeking or making application for licensure or any other application related to the practice of

medicine. Dr. Lakner is also subject to discipline under § 14-404 (a) (21) for being disciplined by another state for acts which would be grounds for disciplinary action under § 14-404 if committed in this State, with underlying grounds of § 14-404 (a) (1) and (36).

V. SANCTION

The Board also adopts the ALJ's comments and inferences made on pages 11 through 24 of the Discussion section of the Proposed Decision, except for that part of page 20 of the Discussion section which faults Dr. Lakner for not reporting the Nevada revocation on the Finan Center application.

Dr. Lakner has a long history of making false and deceptive statements on applications for employment and licensure. He has not accepted responsibility for this conduct; instead, he has consistently blamed others. His actions were intentionally dishonest. He has deliberately deceived this Board, thus hindering the Board in assessing his qualifications.

Physicians must disclose accurate information to enable hospital and HMO credentialing committees, and the Board, to make informed decisions about their professional qualifications. Otherwise, their ability to safeguard public health is seriously compromised. Credentialing committees and the Board, not applicants, decide the relevance and importance of the information requested. Dr. Lakner's disreputable conduct in making false statements on his applications undermines public confidence in the integrity and dignity of the medical

profession. His lack of candor dishonors the reputation and credibility of the great majority of physicians who practice with honesty.

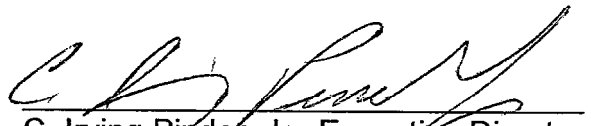
The Board finds first that a one-year suspension is necessary in order to deter Dr. Lakner from repeating this conduct and to deter other physicians from engaging in similar misconduct. The Board has not increased the sanction based on the reciprocal disciplinary actions of the boards in New Jersey or Virginia. The one-year sanction is not itself based on the Medical Board of California's finding that he falsified that state's particular application. The one-year suspension is called for by Dr. Lakner's falsifications of applications to this Board and to the Finan Center and to the Veterans Administration Hospital at Loma Linda and to the Nevada State Board of Medical Examiners. However, an additional period of suspension, beyond the one-year suspension, is based on the decision of the Medical Board of California that he falsified his application in that state. Dr. Lakner will thus remain suspended beyond the one-year period and until he is reinstated to full licensure, without restrictions of any kind, by the Medical Board of California.

VI. ORDER

It is hereby **ORDERED** that the medical license of George S. Lakner, M.D., License No. D25404 be, and it hereby is, **SUSPENDED** for a period of one year from the date of this Order **AND** until his license to practice medicine in California is reinstated without restrictions of any kind; and it is further

ORDERED that this Final Decision and Order is a public document pursuant to Md. State Gov't Code Ann. § 10-617.

SO ORDERED this 29th day of August, 2005.



C. Irving Pinder, Jr., Executive Director
Maryland State Board of Physicians

NOTICE OF RIGHT TO APPEAL

Pursuant to Maryland Health Occ. Code Ann. § 14-408 (b), Dr. Lakner has the right to take a direct judicial appeal. Any appeal shall be filed within 30 days from the receipt of this Final Decision and Order and shall be made as provided for judicial review of a final decision in the Maryland Administrative Procedure Act, State Gov't Article § 10-222 and Title 7, Chapter 200 of the Maryland Rules of Procedure.

If Dr. Lakner files an appeal, the Board is a party and should be served with the court's process. In addition, Dr. Lakner should send a copy to the Board's counsel, Thomas W. Keech, Esq. at the Office of the Attorney General, 300 West Preston Street, Suite 302, Baltimore, Maryland 21201. The Administrative Prosecutor is not involved in the case at this point and need not be served with or copied on the pleadings.

STATE BOARD OF PHYSICIANS

v.

GEORGE S. G. LAKNER, M.D.,

RESPONDENT

License No. D25404

* BEFORE WILLIAM C. HERZING,

* AN ADMINISTRATIVE LAW JUDGE

* OF THE MARYLAND OFFICE

* OF ADMINISTRATIVE HEARINGS

* OAH NO.: DHMH-BPQA-71-03-16253

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PROPOSED DECISION

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ISSUE
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PROPOSED DISPOSITION

STATEMENT OF THE CASE

On June 11, 2003, the State Board of Physicians ("Board") sent the Respondent notice via certified mail that it was charging him with violations of the Maryland Medical Practice Act, Md. Code Ann., Health Occ. § 14-101 through 14-702 (2000) ("the Act"). On November 12, 2003, the Board sent the Respondent notice of Amended Charges that superceded the charges issued on June 11, 2003.¹

An evidentiary hearing was held on July 23, 2004, at Office of Administrative Hearings in Hunt Valley, Maryland before William C. Herzing, Administrative Law Judge ("ALJ"). Md. Code Ann., Health Occ. § 14-405(a) (Supp. 2004). The Respondent was present and was represented by

¹ At the hearing, the Board withdrew Section X, Items 39 through 43 of the charges relating to the Respondent's Kansas renewal application. (Tr. 117,186)

William Michael Mullins, Esquire. Victoria H. Pepper, Assistant Attorney General, represented the Board.

Procedure in this case is governed by the contested case provisions of the Administrative Procedure Act, the Rules of Procedure of the State Board of Physicians, and the Rules of Procedure of the Office of Administrative Hearings. Md. Code Ann., State Gov't §§ 10-201 through 10-226 (1999 & Supp. 2004); Code of Maryland Regulations ("COMAR") 10.32.02; COMAR 28.02.01.

ISSUES

The issues in this case are whether the Respondent violated the following provisions of Md. Code Ann., Health Occ. § 14-404(a):

- (1) Fraudulently or deceptively obtaining or attempting to obtain a license for the applicant or licensee or for another;
- (3) Is guilty of immoral or unprofessional conduct in the practice of medicine;
- (11) Willfully made or filed a false report or record in the practice of medicine;
- (36) Willfully made a false representation when seeking or making application for licensure in any other application related to the practice of medicine;
- (21) Was disciplined by a licensing or disciplinary authority or convicted or disciplined by a court of any state or country or disciplined by any branch of the United States uniformed services or the Veteran's Administration for an act that would be grounds for disciplinary action under this section.

SUMMARY OF THE EVIDENCE

Exhibits²

The Board submitted seventeen exhibits and the Respondent submitted sixty-one exhibits, all of which were admitted into evidence. A complete Exhibit List is attached as Appendix 1.

² The Board's exhibits will be referred to by the designation B followed by the number of the exhibit and the page. Example: Board Exhibit 1, page 1 will be cited as B 1, p.1. Citations to the Respondent's exhibits will follow the same format but will be referred to as R.

Testimony³

Heather McLaughlin, Compliance Analyst testified on behalf of the Board and the Respondent testified on his own behalf.

FINDINGS OF FACT

Having considered all of the evidence presented, I find the following facts by a preponderance of the evidence:

Yale University School of Medicine

1. On or about September 16, 1996, the Respondent filed a civil complaint against Yale University alleging *inter alia*, that he was terminated for use of accrued leave. (Tr. 22; B-2, pgs. 33, 38-39)
2. While at Yale there were no disciplinary actions instituted or taken against the Respondent. (Tr. 94)

Menninger Clinic

3. The Respondent was employed at the Menninger Clinic ("Menninger") from April 22, 1996 until August 26, 1996. The Respondent's employment was terminated for, among other things, abrasive and insulting interaction with all levels of professional staff, assuming that other staff were incompetent, an incident of near insubordination regarding admission of a patient, hostile and intimidating behavior when his opinions were not accepted by others and failure to demonstrate a reasonable degree of flexibility or willingness to change. (Tr. 23; B-3D)

³ References to the transcript will be designated as Tr. followed by the page number.

4. No actions were taken against the Respondent's clinical privileges and medical staff membership while the Respondent worked at Menninger. (Tr.101; R-1)
5. There was no risk management activity taken against the Respondent for unprofessional conduct during his employment at Menninger. (Tr.104; R-14)

MidAtlantic Permanente Medical Group

6. The Respondent signed an Employment Agreement with MidAtlantic Permanente Medical Group ("MidAtlantic") on July 21, 1997.
7. By a letter of December 1, 1997, MidAtlantic advised the Respondent that he was to return to work by December 4, 1997. The notice further advised him that if he did not return to work, he would not be in compliance with their policies and was subject to termination. (Tr. 24; B-4A, D)
8. In March 1998, the Respondent accepted a severance agreement instead of being placed on probation. On March 31, 1998, he signed the severance agreement and submitted a voluntary resignation letter. Subsequently, the Respondent revoked the March 31st agreement and he was then advised by MidAtlantic that he must return to work. The Respondent did not return to work and by a letter of April 14, 1998, MidAtlantic advised the Respondent that he was considered to have resigned without notice. (Tr. 24; B-4D)
9. The Respondent had clinical privileges and no disciplinary action was initiated against his privileges during the time of his employment. (Tr. 130; R-9)

1998 Maryland Renewal Application

10. The Respondent was originally licensed to practice medicine in the State of Maryland on August 4, 1980. On August 3, 1998, the Respondent submitted an

application to renew his Maryland medical license. The Respondent answered "NO" to the following questions:

6. Since July 1, 1996:

n. Has your employment by any hospital, HMO, related health care or other institution, or military entity been terminated for any disciplinary reasons?

o. Have you voluntarily resigned from any hospital, HMO, or other health care facility or institution, or military entity while under investigation by that institution for disciplinary reasons? (Tr. 26-27; B-5)

11. The Respondent did not otherwise report to the Board that he was terminated from the Menninger Clinic in August 1996 and resigned without notice from MidAtlantic in April 1998. (Tr. 28)

Middlesex Hospital

12. On or about January 26, 1999, the Respondent began employment in the position of Medical Director at Middlesex Hospital ("Middlesex"). On June 17, 1999, the Respondent filed a civil complaint in the Superior Court for the State of Connecticut in which he alleged he was terminated without cause. He also alleged in the complaint that he was terminated because he lacked the judgement essential for a Medical Director. (Tr. 29; B-6, pg. 3)

Medical Board of California

13. On March 8, 1999, the Respondent submitted an Application For Physician and Surgeon's Examination or Licensure to the Medical Board of California ("California Board"). (Tr. 30; B-7A)
14. In a letter of July 19, 2000, the California Board denied the Respondents application for a California medical licensure. The reason for the denial as stated in the letter was, "Specifically, the Board's "Returned Originals" form was altered with the

addition of a check mark next to the box labeled "Medical School Diploma" in an attempt to misrepresent eligibility for physician licensure." (Tr. 31; B-7C)

15. The Respondent appealed the California Board's denial and the California Board initially filed a Statement of Issues that set forth the causes for denial of the Respondent's license. The Statement of Issues was amended four times. (Tr. 32 – 33; B-7D, E, F, G, H)
16. During an administrative hearing on the second amended Statement of Issues on June 22, 2001, the Respondent reached a tentative settlement with the California Board whereby he agreed to undergo a psychiatric evaluation and to complete a course in ethics. If he was found by the psychiatric evaluation to be fit to practice medicine safely, the Statement of Issues would be withdrawn and a license issued. If he were not found to be fit to practice medicine safely, the Statement of Issues would stand. (Tr.162; R-4)
17. On July 31, 2001, the Respondent entered into a stipulated agreement with the California Board that was subject to the approval of the Division of Licensing. (Tr. 205, R-20)
18. In November 2001, the California Board decided to wait until its meeting in February 2002 to adopt the agreement. In February 2002, the California Board approved the settlement with the modification that the Respondent would be issued a license but he would be placed on five years probation. (R-20).
19. The Respondent refused to accept the agreement and the matter was reset for a hearing. (B-7J)

20. The matter came for a hearing before an administrative law judge on December 19, 2002. The Respondent did not appear at the hearing. Following the hearing, the ALJ issued a Proposed Decision and subsequently an Amended Proposed Decision that set forth the factual findings and legal conclusions in support of her decision to deny the Respondent's application for California licensure. (Tr. 34; B-7(I), (J))
21. The California Board adopted the Amended Proposed Decision denying the Respondent's application for licensure in California, effective March 31, 2003. (Tr. 34; B-7(K))

Loma Linda VA Hospital

22. On July 16, 1999, the Respondent completed an application for employment with the Department of Veterans Affairs at the Loma Linda Hospital ("Loma Linda" or "the VA"). The Respondent answered "NO" to the following questions:
- 17C. Have any of your staff appointments or clinical privileges ever been denied, revoked, suspended, reduced, limited, not renewed or voluntarily relinquished?
34. Within the last five years have you been discharged from any position for any reason?
35. Within the last five years have our resigned or retired from a position after being notified you would be disciplined or discharged, or after questions about your clinical competence were raised? (Tr. 36; B-8A)
23. The Respondent certified that, "I certify that to the best of my knowledge and belief, all of my statements are true, correct, complete and made in good faith". (Tr. 36; B-8A)
24. On August 16, 1999, the Respondent completed a Declaration for Federal Employment. The Respondent answered No to question 11 which states as follows:
- During the last 5 years, were you fired from any job for any reason, did you quit after being told that you would be fired, did you leave any job by mutual agreement

because of specific problems, or were you debarred from Federal employment by the Office of Personnel Management? If "Yes, use item 15 to provide the date, an explanation of the problem and reason for leaving, and the employer's name and address." (Tr. 37; B-8B)

25. The VA placed the Respondent on administrative leave on June 4, 2001 for issues surrounding his licensing status. (Tr. 38; B-8C)
26. On September 24, 2001, a Professional Service Board ("PSB") of the VA convened a hearing to receive evidence to address the allegations that the Respondent concealed material employment facts in order to acquire Federal employment. The PSB decision was to recommend separation of the Respondent from Federal employment. The Respondent was separated from Federal employment effective November 9, 2001. (Tr. 38-39; B-8D, E)

2000 Maryland Renewal Application

27. The Respondent submitted an Application for Renewal of Medical License on August 3, 2000. The Respondent answered "NO" to the following questions:
 7. Since July 1, 1998
 - a. Has any licensing or disciplinary board of any jurisdiction, including Maryland, or an entity of the armed services denied your application for licensure, reinstatement or renewal, or taken any action against your license, including but not limited to reprimand, suspension, revocation, a fine, or nonjudicial punishment, or for an act that would be grounds for disciplinary action under Md. Code Ann. Health Occ. § 14-404?
 - n. Has your employment by any hospital, HMO, related health care or other institution, or military entity been terminated for any disciplinary reasons? (Tr. 40-41; B-9)

Nevada Medical Board

28. Respondent submitted an Application for Registration Renewal to the Nevada State Board of Medical Examiners ("the Nevada Board") on March 28, 2001. The Respondent answered "NO" to question 7:

Have you ever been denied a license, permission to practice medicine or any other healing art, or permission to take an examination to practice medicine or any other healing art in any state, country or U.S. territory? (Tr. 42; B-10A)

29. The Nevada Board issued a Complaint against the Respondent on June 2, 2001 that alleged that he did not accurately respond to question 7 on the application. On December 19, 2001 the Nevada Board revoked the Respondent's license to practice medicine in Nevada. (Tr. 42-43; B-10B, C)

Thomas B. Finan Center

30. On December 10, 2001, the Respondent submitted an employment application to the Thomas B. Finan Center ("Finan"). The Respondent answered "No" to the following questions:

15. Have your privileges been voluntarily or involuntarily reduced, suspended or terminated at any facility?

Has your medical staff membership been voluntarily or involuntarily suspended or terminated at any facility?

16. Have you ever been denied a license or registration to practice?

17. Have you ever been dismissed from a position?

18. Have you been the object of disciplinary action or citation by a facility, professional board, licensure agency, or other professional or regulatory organization or agency? (Tr. 46-47; B-12A)

31. The Respondent attached a letter to the application regarding problems he had with obtaining a license in California. He did not disclose that the Nevada Board had revoked his license. (Tr. 48; B-12A)
32. The Respondent attested that the answers on the application were true and accurate to the best of his knowledge. (Tr. 48; B-12A)
33. The Respondent resigned from his position at the Finan Center effective April 10, 2002. (Tr. 49; B-12C)

2002 Maryland Renewal Application

34. On September 3, 2002, the Respondent submitted an Application for Renewal of Medical License on which he responded "YES" to the following questions:
 3. Since July 1, 2000,
 - a. Has any licensing or disciplinary board of any jurisdiction, including Maryland, or any entity of the armed services denied your application for licensure, reinstatement or renewal, or taken any action against your license, including but not limited to reprimand, suspension, revocation, a fine or nonjudicial punishment, for an act that would be grounds for disciplinary action under Md. Code Ann. Health Occ. § 14-404?
 - b. Have any complaints, investigations or charges been brought against you or are any currently pending in any jurisdiction by any licensing or disciplinary board or an entity of the armed forces?
 - d. Has an investigation or charge been brought against you by a hospital, related institution or alternative health care system that would be grounds for action under Md. Code Ann. Health Occ. § 14-404?
 - n. Has your employment by any hospital, HMO, related health care or other institution, or military entity been terminated for any disciplinary reasons? (Tr. 50-51; B-13)
35. Along with the application, the Respondent submitted a three-page statement entitled "Additional Information" along with six letters. (B-13)

New Jersey State Board of Medical Examiners

36. The New Jersey State Board of Medical Examiners (“the New Jersey Board”) ordered that the Respondent’s license to practice medicine and surgery be suspended effective May 22, 2003. That action was based on the revocation of his medical license by the Nevada Board and the denial of the Respondent’s medical license by the California Board. (Tr. 52-53; B-14A, B, C)

Virginia Department of Health Professions

37. By an Order dated July 17, 2003, the Virginia Department of Health Professions suspended the Respondent’s medical license in Virginia.

DISCUSSION

The Board seeks to discipline the Respondent under Section 14-404(a) of the Act, which provides in pertinent part:

(a) Subject to the hearing provisions of § 14-405 of this subtitle, the Board, on the affirmative vote of a majority of the quorum, may reprimand any licensee, place any licensee on probation, or suspend or revoke a license if the licensee:

(1) Fraudulently or deceptively obtains or attempts to obtain a license for the applicant or licensee or for another;

(3) Is guilty of immoral or unprofessional conduct in the practice of medicine;

(11) Willfully makes or files a false report or record in the practice of medicine;

(21) Is disciplined by a licensing or disciplinary authority or convicted or disciplined by a court of any state or country or disciplined by any branch of the United States uniformed services or the Veterans' Administration for an act that would be grounds for disciplinary action under this section;

(36) Willfully makes a false representation when seeking or making application for licensure or any other application related to the practice of medicine;

Since this case does not involve standard of care issues, the standard of proof is by the preponderance of the evidence. Md. Code Ann., Health Occ. § 14-405(b)(2), Md.

Yale

The Board charged that the Respondent was terminated from Yale prior to the end of his appointment due to performance issues. In support of the charge, the Board only presented the complaint the Respondent filed against Yale. The Respondent claimed that there were no disciplinary actions taken against him and the suit was a result of actions by an administrator during downsizing in a fiscal crisis. Ms. McLaughlin admitted that she did not determine the result of the lawsuit and the complaint was the only evidence she obtained that showed that the Respondent was terminated. I find that evidence to be insufficient to establish the fact that the Respondent was terminated from Yale University. The alleged facts in the complaint are merely unsupported allegations and they were completely uncorroborated by any other documentation or information from Yale which would show that the Respondent was terminated. The Board argued that the Respondent himself indicated by his signature on the complaint that he was terminated. However, without more, I am not persuaded that the Board has established that he was in fact terminated from employment.

Menninger Clinic

The Respondent was employed at Menninger beginning on April 22, 1996 and his employment was terminated on August 26, 1996. The evidence showed that the Respondent was terminated from employment due to his numerous conflicts with management and staff and his inability to assimilate into the Menninger culture. In a letter dated December 20, 2000, the manager of the clinical staff office detailed many reasons for his termination. (S-3D) The reasons stated in her letter were taken verbatim from a memorandum of August 26, 1996 by Thomas H. Picard, M. D., that recommended the Respondent's termination. (S-3B) The Respondent stated

that Dr. Picard was an administrator who was responsible for terminating employees and the Respondent claimed that memorandum was fabricated at a later date. (Tr. 107) That assertion was simply not credible and it was uncorroborated by other evidence. The memorandum consists of six pages of detailed interactions with the Respondent and I find it highly unlikely such a recitation would have been fabricated years after the events. The Respondent further alleged that Dr. Picard's memorandum was not credible because, during the hearing before the PSB of the VA, Dr. Picard could not testify to facts surrounding the Respondent's separation. (Tr. 110) However, the full context the Dr. Picard's statements recounted in the PSB's decision, (S-8D) show there is nothing that detracts from the veracity of the statements in the memorandum. At the PSB hearing, Dr. Picard testified that he was not present at the final discussions between the Respondent and clinic management and could not testify as to whether the Respondent resigned or was terminated. There is no indication in his testimony that he did not recollect the facts stated in the memorandum.

There were also other documents in the record from the Menninger business office and Human resource department to corroborate the Board's assertion that the Respondent was, in fact, terminated from Menninger. (S-3C) The Respondent maintained that there were no disciplinary actions against his clinical privileges or medical staff membership and there was no risk management activity taken for unprofessional conduct during his employment. (R-1, R-14) Regardless, the evidence in this record showed that, even if his clinical privileges were not affected, the Respondent was disciplined by termination from employment.

MidAtlantic

The Respondent signed an Employment Agreement with MidAtlantic on July 21, 1997 which called for him to commence employment on September 1, 1997. The Respondent testified

that after he signed the contract in July he underwent a pre-employment medical assessment that discovered a life threatening heart condition. The Respondent further testified that he had open-heart surgery in November and did not actually start to work until December, 1997. (Tr. 119-121) The Respondent claimed that after the surgery, the vice president of the company offered him \$40,000.00 to terminate his employment. (Tr. 129) The Respondent again maintained that he kept his clinical privileges and no disciplinary actions were initiated against him during his employment.

Contrary to the Respondent's assertions, the record established that he had ongoing performance issues during his employment at MidAtlantic. In the letter of December 1, 1997, MidAtlantic advised the Respondent that he was to return to work by December 4, 1997, and if he did not, he would not be in compliance with the group's policies and was subject to termination. (S-4B) The letter further stated that the Respondent had not followed leave policies, had not contacted shift supervisors prior to taking leave, and there were difficulties with trying to reach him. In a memorandum of January 20, 1998 (S-4C), MidAtlantic threatened to terminate the Respondent for not obtaining hospital privileges at Fairfax Hospital. A letter of April 14, 1998 (B-4D) noted that because of ongoing performance problems, MidAtlantic offered the Respondent a severance agreement instead of being placed on probation and on March 31, 1998, he signed the severance agreement and submitted a voluntary resignation letter. Subsequently, the Respondent revoked the March 31st agreement and MidAtlantic advised him that he must return to work. The Respondent did not return to work and MidAtlantic considered the Respondent to have resigned without notice. The Respondent's clinical privileges notwithstanding, the evidence in this record supported the Board's allegations that he resigned his position in lieu of disciplinary action.

1998 Maryland Renewal Application

The Respondent submitted an application to renew his Maryland medical license on August 3, 1998. The Respondent answered "NO" to question 6(n) and 6(o).

The Respondent maintained that his employment at Menninger and MidAtlantic were not terminated for a disciplinary reason. His argument is not supported by the evidence. The issue then is whether the answers were willfully false.

In *Stanton v. Machiz*, 183 F.Supp. 719, 725 (D.Md.1960), the District Court stated:

The meaning of the word "willful" depends upon the context in which it appears; and particularly the kind and nature of the statute. Where the term is used in connection with the statute defining criminal conduct, the word "willful" usually requires something more than deliberate and intentional as opposed to accidental and includes an intent of a wrongful or evil purpose. *But where the statute relates to a civil rather than a criminal penalty the meaning of the word connotes only voluntary and intentional action as contrasted with accidental.* Thus, in *United States v. Illinois Central R. Co.*, 303 U.S. 239, 58 S.Ct. 533, 535, 82 L.Ed. 773 (1938), where the statute imposed a penalty on a common carrier for failure to water livestock after thirty-six hours, it was held that the word "willful" did not require proof of an evil intent but that it is sufficient if the failure to act was either *intentional or plainly indifferent to the requirements of the statute.*

Emphasis added. Applied in *Suburban Hosp., Inc. v. Maryland Health Resources Planning Com'n*, 125 Md.App. 579 (1999).

The evidence in this record showed that the Respondent was terminated from Menninger and MidAtlantic for repeated performance and behavioral problems and conflicts with his employers. The Respondent asserted there were no disciplinary actions taken against his hospital privileges at either institution. However, it is apparent that because of the conflicts and performance problems, the discipline against the Respondent was termination from employment rather than an action against his hospital privileges while he was employed. Thus, the Respondent was obligated to answer "Yes" to questions 6(n) and 6(o). The Respondent did not

report to the Board on any other part of the application that he was terminated from the Menninger Clinic in August 1996 and was considered to have resigned without notice from MidAtlantic in April 1998.

Middlesex Hospital

The Respondent began employment Middlesex Hospital on January 26, 1999. On June 17, 1999, the Respondent filed a civil complaint in the Superior Court for the State of Connecticut in which he alleged, *inter alia*, breach of contract because he was “constructively dismissed” and “terminated without cause.” As in the Board’s charges relating to Yale University, the Board asserted that the allegations in the complaint establish that the Respondent was terminated from Middlesex. The Respondent contended that he filed the complaint because he was uprooted from another job and Middlesex was unable to deliver the position for which he was recruited. He claimed that the complaint was a contractual dispute and he was not terminated but resigned for another position. The Respondent submitted a letter from his attorney who filed the complaint that stated that he did not resign and left for personal reasons. (R- 21) As with Yale, there is insufficient evidence from the complaint alone, for me to conclude that the Respondent was in fact terminated from employment. On the other hand, his attorney’s correspondence supports his assertion that the complaint was the result of a contractual dispute and he left employment of his own accord.

Medical Board of California

On March 8, 1999, the Respondent submitted an application for licensure to the California Board. (B-7A) The Board denied the application by a letter of July 19, 2000. The Respondent appealed the California Board’s denial and at a hearing on June 22, 2001, the Respondent reached a tentative settlement that required the Respondent to pass a psychiatric evaluation and to complete a course in ethics. If the Respondent completed the requirements, the California Board would

withdraw the Statement of Issues and issue him a license. The agreement was subject to the approval of the California Board. (R-4). In November 2001, the California Board decided to wait until it's meeting in February 2002 to adopt the agreement. In February 2002, the California Board approved the settlement with the modification that the Respondent would be issued a license but he would be placed on five years probation. The Respondent refused to accept the agreement. (R-20) After receiving additional information, the California Board filed another Statement of Issues and an administrative law judge for the Medical Quality Hearing Panel convened a hearing on December 19, 2002 at which time the Respondent did not appear. After the hearing, the ALJ issued a Proposed Decision and subsequently an Amended Proposed Decision that set forth the factual findings and legal conclusions in support of her decision to deny the Respondent's application for California licensure. (B-7I, J) The California Board adopted the Amended Proposed Decision denying the Respondent's application for licensure in California, effective March 31, 2003. (B-7K)

Loma Linda VA Hospital

On July 16, 1999, the Respondent completed an application for employment with the Department of Veterans Affairs. (B-8A) On the application, the Respondent answered "NO" to question 17C. The Respondent contended that Yale, Middlesex, Menninger and MidAtlantic did not revoke his medical staff privileges. However, as explained above, the evidence in this record showed that the Respondent's appointment to Menninger was terminated and he resigned without notice from his appointment at MidAtlantic.

The Respondent answered "NO" to question 34 and claimed that he had not been fired during the previous 5 years. It is clear from the evidence of his termination from Menninger and his departure from MidAtlantic that the Respondent's answer was intentionally false.

The Respondent answered “NO” to question 35 and again, the Respondent maintained that his answer was correct. However, MidAtlantic offered the Respondent a severance agreement instead of being placed on probation and he signed the severance agreement and submitted a voluntary resignation letter. He eventually revoked the severance agreement and did not return to MidAtlantic and they considered that he resigned without notice. Thus, his answer to question 35 was deliberately false.

The Respondent completed a Declaration for Federal Employment on which he answered “No” to question 11. (B-8B) The evidence in this record clearly showed the Respondent intentionally answered the question falsely.

The Respondent stated that his two-year contract with Loma Linda expired and he chose not to renew it and he denied that he was terminated by the VA. The credible evidence in this record showed that the VA placed the Respondent on administrative leave on June 4, 2001 and the Professional Service Board of the VA determined that the Respondent concealed material employment facts in order to acquire Federal employment. The PSB decision was to recommend separation of the Respondent from Federal employment. The Respondent was separated from Federal employment effective November 9, 2001. (B-8D, E)

2000 Maryland Renewal Application

The Respondent submitted an Application for Renewal of Medical License on August 3, 2000. (B-9) The Respondent answered “No” to questions 7(a) and (n)

The Board argued that the Respondent did not respond truthfully to 7(a) because he failed to disclose that the California Board denied his application for licensure in July 2000. The Respondent contended that he did not disclose the California denial because he believed he would receive a license. (Tr. 149) He also stated that he advised the Board of his licensing status in California and

contacted Ms. McLaughlin after he got the denial letter and told her of the situation. (Tr. 151) She was sympathetic and told him to keep her posted. His lawyer also sent Ms. McLaughlin a letter on April 23, 2001 (R- 19) to advise of her of status of his appeal in California. (Tr. 154)

The evidence in this record showed that the Respondent knew his license application had been denied by California. The July 19, 2000 denial letter was sent to the address provided by the Respondent on his California application for licensure. Even if he thought he would eventually receive a license, the uncontradicted evidence here is that his application had been denied and he was therefore obligated to accurately report the denial on the Maryland renewal application. There was no evidence to support his assertion that he called Ms. McLaughlin after he received the California denial letter and the letter from the Respondent's attorney in April 2001 was well beyond the date he submitted the renewal application on August 3, 2000. Therefore the Respondent failed to respond truthfully to question 7(a).

In answering question 7(n), the Respondent stated that he did not disclose his termination from Middlesex because he was not terminated. As stated above, there is insufficient evidence to support the Board's allegation that the Respondent was terminated from Middlesex and therefore no evidence his answer was inaccurate.

Nevada Medical Board

The Respondent submitted an application to the Nevada Board on March 28, 2001 in which he answered "No" to question 7. (B-10A) The Nevada Board issued a Complaint against the Respondent on June 2, 2001 that alleged that he did not accurately respond to the question and on December 19, 2001 the Nevada Board revoked the Respondent's license to practice medicine in Nevada. (B-10B, C) The Respondent claimed that he called a Mr. Franz from the Nevada Board and told him about the status of his California license and Franz told him to answer "no"

to question 7 because there was nothing to report. (Tr.184-185) I find the Respondent's claims in this regard simply not credible. I question why he would need guidance on how to respond to question 7 when all of the evidence showed that his California application had been denied and nothing had operated to change that status. The Respondent did not make the tentative settlement with the California Board until June 22, 2001 and even that was subject to Board approval. Therefore, the Respondent knowingly answered question 7 falsely.

Finan Center

On December 10, 2001, the Respondent submitted an employment application to the Thomas B. Finan Center. (B-12A)The Respondent answered "NO" to questions 15, 16, 17 and 18.

In response to question 15, the Respondent did not report that he was terminated from Menninger and Loma Linda VA Hospital and he did not report that he resigned without notice from MidAtlantic.

The Respondent did not truthfully respond to question 16 because he did not disclose that the Nevada Board had revoked his license. He claimed that an individual in the California licensing program kept opposing the psychiatrists he selected to perform the evaluation according to the settlement agreement and he ran out of time to show the Nevada Board he had obtained a California license. Then, Nevada revoked his license in that state. (TR. 163) Nevertheless, the Respondent did not convey any of that information on the application.

The Respondent attached a letter to the application regarding problems he had with obtaining a license in California. His statement says, "...the state administrator has instructed the Licensing Division to grant my application during their next, February 2002 meeting." The Respondent stated an attorney general in California orally told him the California Board would issue his license at the meeting on February 1, 2002. (Tr. 164) However, the Respondent did not disclose

that the issuance of a license was conditioned on his compliance with, and execution of the tentative settlement agreement reached with the California Board on July 31, 2001. Nor did he report that the hearing and the settlement agreement were the result of a pending challenge to his professional licensure. He also did not report that the settlement was subject to the California Board approval. The Respondent's statement gives the impression that obtaining a license during the February 2002 California Board meeting was a certainty and it did not truthfully reflect the status of his application.

The Respondent's answer to question 17 failed to address what happened at Menninger, Loma Linda VA Hospital and MidAtlantic. The Respondent did not truthfully respond to question 18 and he did not report that his Nevada license had been revoked and did not truthfully convey the status of his California application.

2002 Maryland Renewal Application

On September 3, 2002, the Respondent submitted an Application for Renewal of Medical License on which he responded YES to questions 3(a), (b), (d) and (n). (B-13) The Respondent also submitted three pages of "Additional Information" along with the renewal application and he included six pieces of correspondence. (S-13)

The Board charged that the Respondent misrepresented the circumstances of the California Board's denial of his application and that he failed to disclose that he was terminated from Loma Linda VA Hospital in response to question 3(n). In this instance, the Board's allegations are not supported by the record. The Respondent answered affirmatively to the pertinent questions on the application. The three-page attachment talks at length about the Respondent's licensing situation in California and presents his version of the events surrounding the license denial. Additionally, the letters of August 31, 2000 from Peter Horvath, letter of April 23, 2001 from Robert Sullivan, letter of February 15, 2002 from Daniel Willick, and letters of February 22, 2002 and March 27, 2002

from Timothy Aspinwall all clearly note the Respondent's licensing status in California. While they state the situation from a viewpoint favorable to the Respondent, they are not blatantly misleading and provide evidence that the Respondent disclosed the situation.

The Board also alleged that the Respondent's statement did not disclose that he had been terminated from the Loma Linda VA Hospital. The Respondent's statement make a vague reference to "hate files" being turned over to a federal personnel officer and his employment being terminated. However, the Respondent also attached the letter from Daniel Willick, of February 15, 2002 which states that the VA terminated the Respondent's employment for failure to disclose the situation with Yale and Menninger and Middlesex. Again, the letter is from the Respondent's counsel and slants the information to make it seem that the termination was everyone else's fault. Nevertheless, the Respondent adequately responded to the question and the information was presented to the Board.

New Jersey State Board of Medical Examiners

The New Jersey State Board of Medical Examiners ("the New Jersey Board") ordered that the Respondent's license to practice medicine and surgery be suspended effective May 22, 2003. That action was based on the revocation of his medical license by the Nevada Board and the denial of the Respondent's medical license by the California Board.

Virginia Department of Health Professions

By an Order dated July 17, 2003, the Virginia Department of Health Professions suspended the Respondent's medical license in Virginia.

Proposed Sanction

The Board charged that the Respondent's license to practice medicine in Maryland may be revoked for his false statements on the various applications and because the Respondent was

disciplined by a licensing or disciplinary authority of another state, for an act that would be grounds for disciplinary action under Md. Code Ann., Health Occ. § 14-404(a). Specifically, the Board charged that the underlying grounds for discipline under Md. Code Ann., Health Occ. § 14-404(a)(21) were violations of Md. Code Ann., Health Occ. §§ 14-404(a) (1), and (36).

Md. Code Ann., Health Occ. §§ 14-404(a) provides in pertinent part:

(a) Subject to the hearing provisions of § 14-405 of this subtitle, the Board, on the affirmative vote of a majority of its full authorized membership, may reprimand any licensee, place any licensee on probation, or suspend or revoke a license if the licensee:

* * * *

(1) Fraudulently or deceptively obtains or attempts to obtain a license for the applicant or licensee or for another; and;

* * * *

(36) Willfully makes a false representation when seeking or making application for licensure or any other application related to the practice of medicine.

The Board contended that in a reciprocal discipline case it may impose the same discipline imposed by its sister state. The Respondent's license was revoked in Nevada and the Board argued that the same sanction should be imposed here. The Board did not provide me with any case law from the State of Maryland that concerns what the Board is to consider in reciprocal discipline cases. In *Attorney Griev. Comm. v. Willcher* the Court of Appeals held:

In cases of reciprocal discipline where both Maryland and the District of Columbia have addressed the same instances of attorney misconduct, Maryland has frequently, though not always, imposed the same sanctions as the District of Columbia. Maryland does not, however, automatically impose the same sanction as its sister state in all cases of reciprocal discipline. As this court has stated in *Parsons*, 310 Md. At 142, 527 A.2d at 330: When the Court considers the appropriate sanction in a case of reciprocal discipline, we look not only to the sanction imposed by the other jurisdiction but to our own cases as well. The sanction will depend on the unique facts and circumstances of each case, but with a view toward consistent dispositions for similar misconduct.

Attorney Grievance Com'n v. Willcher, 340 Md. 217, 221-222, 665 A. 2d 1059, 1061 (1995) (citations omitted). Thus, the disciplinary determination of the jurisdiction where the misconduct occurred is only one of the factors to be considered in imposing a sanction in Maryland. In this case, Nevada has revoked the Respondent's license as a result of California's denial of his application. He is suspended in Virginia and New Jersey and remains denied in California.

The Respondent contended that the charges do not involve his duties or functions as a physician and do not involve patient care. The Respondent asserted that to revoke his license would be punitive under the facts of this case given there was no harm to patients.

The Board may reprimand, place on probation, suspend or revoke a physician's license if that physician violates any of the disciplinary grounds set forth in Md. Code Ann., Health Occ. HO § 14-104(a). The Board may impose a revocation even if the Respondent's actions did not affect patient care. Physicians have been disciplined for misconduct in the practice of medicine while performing clerical tasks such as billing third party payors, submitting false reports and bills to an attorney even though the fraud was not perpetrated directly on the patient and for fraudulent representations in the practice of osteopathic medicine for fraudulently prescribing drugs for personal use even though the action did not affect the care of patients. *Board of Physician Quality Assur. v. Banks* 354 Md. 59, 74-75, 729 A.2d 376, 384 (Md.,1999)(citations omitted).

The evidence showed that the Respondent has a long history of making false statements on applications for employment and licensure and his conduct was not an isolated incident. In all respects, his testimony showed that the Respondent has not accepted responsibility for any of the events that have transpired and has consistently blamed others whom he claimed were out to get him. While the Respondent is certainly a highly accomplished individual, the evidence in this

record also shows that he has acted dishonestly with potential employers and licensing authorities. His false statements on the 1998 and 2000 Maryland renewal applications prevented the Board from ascertaining an accurate history of the Respondent's employment and licensing history thereby negating the Board's ability to protect the citizens of the State of Maryland. However, I disagree that revocation is appropriate in this case. Virginia and New Jersey have only suspended the Respondent's license in those states. Furthermore, I have found that the Board's evidence did not support the charges that the Respondent made false statements concerning his employment at Yale and Middlesex. The Respondent did report on the 2002 Maryland renewal application the status of his license application in California and that he was terminated from Loma Linda VA Hospital. I find it particularly significant that the Respondent is currently a full colonel on active duty in the United States Army. He recently returned from duty in Iraq and was awaiting redeployment at the time of the hearing. I agree with the Respondent's contention that if his Maryland license is revoked, other states where he is licensed may also revoke his license and consequently, he would be relieved of his military duties.⁴ Such a scenario would be detrimental to the health and welfare of those military personnel who depend on the Respondent's service. The Respondent currently does not practice in Maryland and citizens will not be jeopardized by a sanction less severe than revocation. A suspension of the Respondent's license for one year will send a clear, message that the dishonesty he has displayed will not be tolerated. It will also deter other physicians from attempting to conceal their history which could disclose incompetence, abusive or other dangerous behavior by physicians seeking licensure in Maryland.

⁴ The Respondent did not provide any evidence of the affect a suspension of his medical license in Maryland, or any other state, would have on his ability to carry out his military function.

The primary objective of the Act is to protect the public from physicians who engage in the legislatively defined offensive conduct. A significant suspension of the Respondent's license will help ensure the citizens of this State receive proper medical care from licensed physicians who have fully disclosed their employment and licensing history, yet enable the Respondent to continue to serve the United States military in his present capacity.

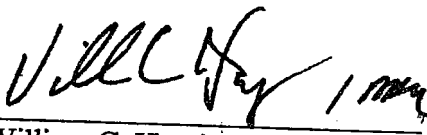
CONCLUSIONS OF LAW

Based upon the preceding findings of fact and discussion, I conclude that the Respondent did violate Md. Code Ann., Health Occ., §14-404(a)(1), (3), (11) and (36). I further conclude that the Respondent was disciplined by a licensing or disciplinary authority of another state for acts that would be grounds for disciplinary action under of Md. Code Ann., Health Occ. §§ 14-404(a)(1), and (36) and therefore the Respondent is subject to sanction under Md. Code Ann., Health Occ. § 14-404(a)(21).

PROPOSED DISPOSITION

I **PROPOSE** that the Respondent's license to practice medicine in the State of Maryland be suspended for one year.

October 29, 2004
Date



William C. Herzing
Administrative Law Judge

#66859

NOTICE OF RIGHT TO FILE EXCEPTIONS

Any party may file exceptions, in writing, to this Proposed Decision with the State Board of Physicians within fifteen (15) days of receipt of the decision. The Office of Administrative Hearings is not a party to any review process. Md. Code Ann., State Gov't § 10-216 (1999) and COMAR 10.32.02.03F.