

IN THE MATTER OF * BEFORE THE BOARD OF PHYSICIAN
ADUL RERMGOSAKUL, M.D. * QUALITY ASSURANCE OF MARYLAND
LICENSE # D18441 * CASE # 96-0088

* * * * *

FINAL ORDER

This case arose from information received by the Board of Physician Quality Assurance ("BPQA" or "Board") that Adul Rermgosakul, M.D. (the "Respondent"), License Number D18441, pled guilty to one (1) count of felony Medicaid Fraud, in violation of Md. Ann. Code art. 27, § 230C in the Circuit Court for Baltimore City.

On October 25, 1995, the Office of the Attorney General filed with the Board a Petition to Revoke Respondent's Medical License, pursuant to Md. Code Ann., Health Occ. ("H.O.") § 14-404(b)(2). H.O. § 14-404(b) provides:

(1) On the filing of certified docket entries with the Board by the Office of the Attorney General, the Board shall order the suspension of a license if the licensee is convicted of or pleads guilty or nolo contendere with respect to a crime involving moral turpitude, whether or not any appeal or other proceeding is pending to have the conviction or plea set aside.

(2) After completion of the appellate process if the conviction has not been reversed or the plea has not been set aside with respect to a crime involving moral turpitude, the Board shall order the revocation of a license on the certification by the Office of the Attorney General.

Attached to the Petition were exhibits which consisted of the following: copy of Criminal Information Number 295206005; certified copy of the Docket Entry; copy of the Plea Agreement; copy of the

Order for Probation; and copy of the Statement of Facts.

On October 30, 1995, BPQA served upon Respondent's counsel, Thomas F. O'Neil III, Esquire, a copy of the Petition to Revoke with exhibits and a Show Cause Order which ordered Respondent to show cause by November 28, 1995 why his medical license should not be revoked pursuant to H.O. §14-404(b)(2). On November 28, 1995, Respondent's counsel filed an Answer to Show Cause Order. Subsequently, on December 15, 1995, the Office of the Attorney General filed the State of Maryland's Response to Respondent's Answer to Show Cause Order on the State's Petition to Revoke Respondent's Medical License.

On December 20, 1995, BPQA convened for a final decision in the case. After consideration of the Petition with exhibits, Respondent's Answer to Petition to Revoke Respondent's Medical License and the State's Response, BPQA voted to revoke Respondent's medical license after determining that he had pled guilty to a crime involving moral turpitude.

FINDINGS OF FACT

By clear and convincing evidence, BPQA finds that:

1. At all times relevant to these charges, Respondent was and is licensed to practice medicine in the State of Maryland.
2. On July 25, 1995, the Respondent was indicted in the Circuit Court for Baltimore City in the matter of State of Maryland v. Adul Rermgosakul, criminal information number 295206005, with one (1) count of Medicaid Fraud by knowingly and willfully making

and causing to be made a series of false statements and false representations of material fact in submitting invoices requesting payment for services which were not performed and which involved money, goods and services having a value of Five Hundred Dollars (\$500.00) or more in the aggregate, in violation of Md. Ann. Code art. 27, § 230C.

3. On August 15, 1995, the Respondent appeared in the Circuit Court for Baltimore City and, pursuant to a plea agreement with the Office of the Attorney General, entered a guilty plea as charged to one (1) felony count of knowingly submitting invoices for payment for services which were not performed, in violation of Article 27, §§230C and 230B of the Annotated Code of Maryland.

4. On August 22, 1995, the Respondent was sentenced and remanded to the custody of the Maryland Division of Corrections for a period of five (5) years with all but thirty (30) days (to be served as home detention) suspended, and ordered to pay a fine of \$10,000.00 plus court costs, and restitution to the State medical Care Finance and Compliance Administration (the "MCPCA") in the amount of Two Hundred and Twenty-Five Thousand Dollars (\$225,000.00). The Respondent was placed on unsupervised probation for five (5) years.

5. Respondent did not file an appeal within thirty days of the entry of his guilty plea.

6. On October 25, 1995, the Office of the Attorney General filed with BPQA a Petition to Revoke Respondent's Medical License pursuant to R.O. § 14-404(b)(2). Attached as exhibits to the Petition were a copy of Criminal Information Number 295206005; a

certified copy of the Docket Entry; a copy of the Plea Agreement; a copy of the Order for Probation; and a copy of the Statement of Facts.

7. On November 28, 1995, the Respondent, through his attorney, Thomas F. O'Neil III, filed an Answer to Show Cause Order.

8. On December 15, 1995, Jean Baron, Assistant Attorney General, Administrative Prosecutor filed State of Maryland's Response to Respondent's Answer to Show Cause Order on the State's Petition to Revoke Respondent's Medical License with the Board.

9. The Maryland Court of Appeals, in Att'y Grievance Comm'n v. Walman, 280 Md. 453 (1977), determined that a crime in which fraud is an essential element is a crime involving moral turpitude.

10. The Maryland Court of Appeals, in Bar Ass'n of Baltimore City v. Seigel, 275 Md. 521 (1975), has defined a crime of moral turpitude as one involving "fraud, deceit and dishonesty."

11. Based on the totality of the circumstances surrounding Respondent's act, BPQA finds that the crime to which Respondent pled guilty, namely, Medicaid Fraud, in violation of Md. Ann. Code art. 27, § 230C, is a crime involving moral turpitude.

CONCLUSIONS OF LAW

Based on the foregoing Findings Of Fact, and after consideration of the Petition with exhibits, Respondent's Answer to Petition to Revoke Respondent's Medical License and the State's Response, a majority of the full authorized membership of BPQA

finds that there is clear and convincing evidence to determine as a matter of law that Respondent falls within the mandate of H.O. § 14-404(b), which provides:

(1) On the filing of certified docket entries with the Board by the Office of the Attorney General, the Board shall order the suspension of a license if the licensee is convicted of or pleads guilty or nolo contendere with respect to a crime involving moral turpitude, whether or not any appeal or other proceeding is pending to have the conviction or plea set aside.

(2) After completion of the appellate process if the conviction has not been reversed or the plea has not been set aside with respect to a crime involving moral turpitude, the Board shall order the revocation of a license on the certification by the Office of the Attorney General.

BPQA'S RESPONSE TO RESPONDENT'S ANSWER TO PETITION
TO REVOKE RESPONDENT'S MEDICAL LICENSE

Respondent asserts that his medical license should not be revoked pursuant to H.O. § 14-404(b) because he cooperated fully in the underlying criminal case; the billing was performed by his office manager, though Respondent accepts full responsibility for improper billing; and because the crime to which he pled guilty did not involve moral turpitude. Furthermore, Respondent argues that lack of law on the issue of fraud as a crime of moral turpitude and the necessity for BPQA to examine moral turpitude on a case-by-case basis require that he be offered an opportunity to settle the case.

When a licensee is charged with violations of H.O. § 14-404(a), the resulting administrative proceedings are made subject to the hearing provisions of the Maryland Administrative Act, Md. Code Ann., State Gov't ("S.G.") § 10-201 et seq. In determining a sanction, BPQA assesses criteria such as the integrity of the

medical profession, the public interest, and amenability to rehabilitation. In contrast, the mandatory sanction imposed by H.O. § 14-404(b) indicates that the legislature has already assessed dispositional factors and determined that those who have engaged in certain types of criminal conduct should be subject to a strict sanction.

Once BPQA determines that the crime at issue involves moral turpitude, it has no discretion to impose a sanction other than that mandated by the statute. While Respondent's cooperation with the Medicaid Fraud Unit of the Office of the Attorney General is commendable, such mitigating circumstances do not negate the fact that Respondent pled guilty to a crime involving moral turpitude.

BPQA rejects the notion that the medicaid fraud committed by Respondent does not involve moral turpitude or that little law exists on the issue. The Court of Appeals in Att'y Grievance Comm'n v. Walman, 280 Md. 453, 374 A.2d 354 (1977), pronounced as well-settled law that a crime containing fraud as an essential element involves moral turpitude. Furthermore, the Court iterated that moral turpitude involves intentional dishonesty for personal gain. Id. at 459, 374 A.2d at 354.

By pleading guilty to medicaid fraud, Respondent admitted to conduct which met the elements for medicaid fraud. The Court of Appeals, in Sutton v. State, 289 Md. 359, 424 A.2d 755 (1981), held that "an acceptable guilty plea is an admission of conduct that constitutes all the elements of a formal criminal charge," such that "a plea of guilty, once accepted, is the equivalent of a

conviction." Id. at 364, 424 A.2d at 758. Furthermore, before accepting a guilty plea, the presiding judge is required to determine whether the conduct admitted by the defendant constitutes the elements of the crime charged. Id. at 364-65, 424 A.2d at 758.

In this case, the Statement of Facts supporting the plea agreement, into which Respondent entered voluntarily, demonstrates a continuing course of conduct whereby numerous patients were billed for a level of service far in excess of that actually provided. By signing the plea agreement, Respondent admitted to conduct which clearly support the elements of medicaid fraud, namely, by submitting false statements requesting payment for services which were not performed. BPQA relied on these facts in determining that Respondent pled guilty to a crime involving moral turpitude.

Because disciplinary action under H.O. § 14-404(b) is a derivative action based on underlying criminal proceedings, Respondent may not attempt to challenge the integrity of his guilty plea in the administrative forum. Bar Ass'n of Baltimore City v. Seigel, 275 Md. 521, 340 A.2d 710 (1975), involved discipline of an attorney under former Rule BV16, virtually identical to H.O. § 14-404(b). There, the Court of Appeals denied the attorney an opportunity to present mitigating evidence in an attempt to challenge his conviction in the disciplinary forum:

[w]e cannot accept as 'compelling extenuating circumstances' those proffers by the respondent which in essence call upon us to assess the integrity of the criminal conviction itself—that prior adjudication is conclusive and thus cannot be attacked in a disciplinary proceeding by invoking this Court to re-weigh or to re-evaluate the respondent's guilt or

innocence....

Id. at 527, 340 A.2d at 713.

Respondent's attempt to raise mitigating factors, such as his cooperation and the role of his office manager, may thus not be considered by BPQA at this juncture. Such factors are more appropriately considered by BPQA upon a timely petition for reinstatement.

Finally, BPQA denies Respondent's request for action under H.O. § 14-404(a), a settlement conference, or a contested case hearing. The plain language of the statute evidences a legislative intent to avoid a contested case hearing in these cases. Because Respondent is precluded from challenging his guilty plea in the administrative forum and the sanction is mandated by the General Assembly, neither a contested case hearing nor a settlement conference would militate BPQA's acting contrary to the statutory mandate.

ORDER

Based on the foregoing Findings of Fact and Conclusions of Law, it is this 28 day of December, 1995, by a majority of the full authorized membership of the Board considering this case


ORDERED that the license of Respondent, Adul Rermgosakul, M.D., to practice medicine in the State of Maryland is hereby REVOKED as mandated by Md. Code Ann., Health Occ. § 14-404(b)(2); and be it further

ORDERED that this is a Final Order of the Board of Physician

Quality Assurance and as such is a PUBLIC DOCUMENT pursuant to Md. Code Ann., State Gov't § 10-611 et seq.

NOTICE OF RIGHT TO APPEAL

Pursuant to Md. Code Ann., Health Occ. § 14-408, you have a right to take a direct judicial appeal. A petition for appeal shall be filed within thirty days from your receipt of this Final Order and shall be made as provided for judicial review of a final decision in the Maryland Administrative Procedure Act, Md. Code Ann., State Gov't §§ 10-201 et seq., and Title 7, Chapter 200 of the Maryland Rules.



Israel H. Weiner, M.D.
Chair

12/28/95

Date