

STATE OF MICHIGAN
DEPARTMENT OF LICENSING AND REGULATORY AFFAIRS
BUREAU OF HEALTH CARE SERVICES
BOARD OF MEDICINE
DISCIPLINARY SUBCOMMITTEE

In the Matter of

MARSHALL JEFFREY HUBSHER, M.D.
License No. 43-01-102701

Complaint No. 43-14-132117

FIRST SUPERSEDING ADMINISTRATIVE COMPLAINT

Attorney General Bill Schuette, through Assistant Attorney General M. Catherine Wilcox, on behalf of Complainant Department of Licensing and Regulatory Affairs, Bureau of Health Care Services, files this first superseding administrative complaint against Respondent Marshall Jeffrey Hubsher, M.D., alleging upon information and belief as follows:

1. The Board of Medicine, an administrative agency established by the Public Health Code, 1978 PA 368, as amended, MCL 333.1101 *et seq.*, is empowered to discipline licensees under the Code through its disciplinary subcommittee.
2. Respondent is currently licensed to practice medicine in the state of Michigan, has an active controlled substance license, and has an address of record with Complainant of Sands Point, New York.
3. Section 16221(b)(x) of the Code authorizes the disciplinary subcommittee to take disciplinary action against a licensee for a final adverse action by a licensure, registration, disciplinary, or certification board involving the holder of, or an applicant for, a license or registration regulated by another state.

4. Section 16221(c)(i) of the Code authorizes the disciplinary subcommittee to take disciplinary action against a licensee for fraud or deceit in obtaining or renewing a license or registration.

5. Section of 16221(f) of the Code authorizes the disciplinary subcommittee to take disciplinary against a licensee for failure to notify the Department of a final adverse action by another state.

6. Section 16222(4) requires a licensee or registrant to notify the Department of a disciplinary licensing or registration action taken by another state against the licensee or registrant within 30 days after the date of the action.

7. Section 16226 of the Code authorizes the disciplinary subcommittee to impose sanctions against persons licensed by the Board, if after an opportunity for a hearing, the disciplinary subcommittee determines that a licensee violated one or more of the subdivisions contained in section 16221 of the Code.

FACTUAL ALLEGATIONS

New York Disciplinary History

8. On October 22, 1976, the New York State Education Department issued Respondent a license to practice medicine. See Exhibit 1.

9. On April 27, 1988, the New York Commissioner of Education suspended Respondent's license for 5 years, stayed the last 42 months of the suspension, and placed Respondent on probation for 42 months. The disciplinary action was based upon his 1982 federal criminal conviction for possessing approximately 2,000 Methaqualone tablets, a 1983 disciplinary action for issuing a

prescription for a controlled substance with a false date, and a 1987 state criminal conviction for Medicaid fraud. A certified copy of the New York disciplinary records is attached as Exhibit 2.

10. On May 16, 1995, the New York Administrative Review Board for Professional Medical Conduct revoked Respondent's license to practice medicine for practicing medicine while his license was suspended, failing to maintain records, and practicing the profession fraudulently. See Exhibit 2.

11. On April 12, 2000, the New York Commissioner of Education denied Respondent's petition for restoration of his license. See Exhibit 2.

12. On April 18, 2006, the New York Commissioner of Education reinstated Respondent's license to practice medicine. See Exhibit 2.

13. On May 17, 2012, the New York State Board for Professional Misconduct filed a Statement of Charges against Respondent, which accused Respondent of fraudulent practice; false report; failure to maintain records; moral unfitness; negligence and incompetence on more than one occasion; gross negligence; willful patient harassment, abuse or intimidation; and exercising undue influence on a patient. See Exhibit 1.

14. On June 28, 2012, the New York State Board for Professional Misconduct issued a Surrender Order, requiring Respondent to surrender his license to practice medicine. A certified copy of the New York Surrender Order is attached as Exhibit 1.

Michigan License Applications

15. On or about June 3, 2012, Respondent applied for a license to practice medicine in Michigan. He indicated on the application that he had been convicted of a felony and that he had "had federal or state health professional [license] or registration revoked, suspended, or otherwise disciplined; been denied a license; or currently have disciplinary action pending against [him.]"

16. As part of his application, Respondent certified that "[t]he statements in this application are true and correct," he had "not withheld information that might affect the decision to be made on this application," and he is "aware that a false statement or dishonest answer may be grounds for denial of [his] application or revocation of [his] license and that such misrepresentation is punishable by law."

17. On July 19, 2012, a Department employee contacted Respondent requesting that he provide an explanation for his felony conviction and disciplinary actions in other states.

18. On the same day, Respondent replied to the Department employee's email, disclosing his 1987 Medicaid fraud conviction and subsequent New York license suspension and revocation. However, he did not provide accurate dates for the above conviction and disciplinary actions. He did not disclose that the suspension was also based on another criminal conviction and disciplinary action. He also failed to explain that the suspension was followed by 42 months of probation.

19. Respondent also failed to disclose New York's denial of his application to reinstate his license in 2000 and the surrender of his New York license in 2012.

20. On May 19, 2013, Respondent applied for a controlled substance license with the Board of Pharmacy. He indicated on the application that he has "had [a] health professional license limited, suspended, revoked, denied, or surrendered[.]"

21. The application required Respondent to explain such disciplinary history. Respondent only disclosed his New York medical license suspension in 1988, revocation in 1995, and surrender. Respondent did not disclose that the suspension was based on a 1982 federal criminal conviction, a 1983 disciplinary action, and a 1987 state criminal conviction for Medicaid fraud. He also failed to explain that the suspension was followed by 42 months of probation.

22. In addition, Respondent failed to disclose New York's denial of his application to reinstate his license in 2000. He also did not provide any details regarding the surrender of his New York license in 2012.

Maine Sister-State Action

23. On July 11, 2013, the State of Maine Board of Licensure in Medicine, hereafter Maine Board, issued a Decision and Order that denied Respondent's application for licensure based on "grounds existed that could be grounds for disciplinary action against him were he licensed in Maine." A certified copy of the Decision and Order is attached as Exhibit 3.

24. In denying Respondent's application for licensure, the Maine Board found that Respondent had committed the following violations of Maine law:

- Committed the practice of fraud or deceit in attempting to obtain a license and in connection with service rendered within the scope of a license from another state.
- Committed incompetence in the practice of medicine by engaging in conduct that evidences a lack of ability or fitness to discharge the duty owed to a patient or the general public.
- Engaged in unprofessional conduct.
- Convicted of a crime that involved dishonesty or false statement and related directly to the practice for which he was licensed.
- Had his license to practice medicine revoked, suspended, or restricted and surrendered his license to practice medicine following the institution of disciplinary action by another state due to conduct that would have constituted grounds for discipline in the State of Maine.

25. Specifically, the Maine Board found that during the licensing process, Respondent did not indicate that the 1988 suspension of his New York license was based on two convictions in addition to his Medicaid fraud conviction and failed to explain that 42 months of probation followed the suspension.

26. In addition, the Maine Board found that Respondent did not disclose the denial of his 1990 petition for licensure in Connecticut; his arrest and charges for rape in the third degree and a criminal sexual act in the third degree on April 18 and 19, 2012 based on allegations that he engaged in sexual intercourse with a female patient during a treatment session on April 3, 2012; and the Surrender and Consent Agreement and Order placing him on probation as of June 28, 2012 pending the surrender of his New York license on July 31, 2012.

27. Respondent failed to notify the Department of the final adverse administrative action by the Maine Board within 30 days of the disciplinary action. See Affidavit of Bilal Allateef attached as Exhibit 4.

COUNT I

28. Respondent's conduct as described above constitutes a final adverse action by a licensure, registration, disciplinary, or certification board involving the holder of, or an applicant for, a license or registration regulated by another state or a territory of the United States, in violation of section 16221(b)(x) of the Code.

COUNT II

29. Respondent's conduct as described above constitutes fraud or deceit in obtaining or renewing a license or registration, in violation of section 16221(c)(i) of the Code.

COUNT III

30. Respondent's conduct as described above constitutes a failure to notify the Department of an adverse action by another state or a territory of the United States contrary to section 16222(4), in violation of section 16221(f) of the Code.

RESPONDENT IS HEREBY NOTIFIED that, pursuant to section 16231(8) of the Public Health Code, Respondent has 30 days from receipt of this complaint to submit a written response to the allegations contained in it. The written response shall be submitted to the Bureau of Health Care Services, Department of Licensing and Regulatory Affairs, P.O. Box 30670, Lansing, Michigan 48909, with a copy to

the undersigned assistant attorney general. Further, pursuant to section 16231(9), failure to submit a written response within 30 days shall be treated as an admission of the allegations contained in the complaint and shall result in transmittal of the complaint directly to the Board's Disciplinary Subcommittee for imposition of an appropriate sanction.

FURTHER, the administrative complaint previously filed against Respondent on May 27, 2014 is hereby WITHDRAWN and replaced in full by this first superseding administrative complaint.

Respectfully submitted,

BILL SCHUETTE
Attorney General

M. Catherine Wilcox

M. Catherine Wilcox (P73340)
Assistant Attorney General
Licensing & Regulation Division
525 W. Ottawa, 3rd Floor, Wms Bldg.
P.O. Box 30758
Lansing, Michigan 48909
(517) 373-1146

Date: November 20, 2014

PROOF OF SERVICE

The undersigned certifies that on the date indicated above a copy of the foregoing document was served upon Marshall Jeffrey Hubsher, M.D., Respondent, by mailing the same enclosed in an envelope bearing first class postage fully prepaid and plainly addressed as follows:

Marshall Jeffrey Hubsher, M.D., 89 Middle Road, Sands Point, NY 11050

Susan Macias

Susan Macias