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**COMMONWEALTH OF PENNSYLVANIA
DEPARTMENT OF STATE
BEFORE THE STATE BOARD OF MEDICINE**

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Department of State

**Commonwealth of Pennsylvania
Bureau of Professional and Occupational Affairs**

vs.

**Charlotte Lilly Blyn, M.D.,
Respondent**

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**Docket no. 1100-49-02
DOS File no. 01-49-03563**

ADJUDICATION AND ORDER

**Frank C. Kahoe, Jr.
Hearing Examiner**

**2601 North Third Street
Harrisburg, PA 17110**

HISTORY

This matter comes before the hearing examiner for the Department of State on an order to show cause (OSC) filed by the Commonwealth August 29, 2002, charging that Charlotte Lilly Blyn, M.D. (Respondent) is subject to disciplinary action section 701(f) of the Health Care Services Malpractice Act (HCSMA),¹ 40 P.S. § 1301.701(f), for practicing medicine in Pennsylvania without having professional liability insurance coverage for approximately 1 ½ years between January 1997 and July 1998, and for failing to pay annual surcharges levied by the Medical Professional Liability Catastrophe Loss (CAT) Fund for that period. The Commonwealth also charges that Respondent is subject to disciplinary action under section 41(6) of the Medical Practice Act of 1985 (Medical Practice Act),² 63 P.S. § 422.41(6), in that Respondent allegedly violated regulations of the State Board of Medicine (Board) at 49 Pa. Code § 16.31-35 by not maintaining required professional liability insurance. Respondent filed an answer to the OSC September 27, 2002, and a formal administrative hearing was held in Harrisburg December 20, 2002. Karen L. Stevens, Esquire represented the Commonwealth as prosecuting attorney. Respondent attended the hearing without counsel. The parties

¹ Act of October 15, 1975, P.L. 390, *as amended*, 40 P.S. § 1301.101 *et seq.* The HCSMA was repealed by the Medical Care Availability and Reduction of Error (MCARE) Act, Act of March 20, 2002, P.L. 154, No. 113, 40 P.S. § 1303.101 *et seq.*, which substantially reenacted provisions of the HCSMA under which Respondent is charged in this action.

² Act of December 20, 1985, P.L. 457, *as amended*, 63 P.S. § 422.1 *et seq.*

waived the filing of briefs and the record was closed with the filing of notes of testimony

January 6, 2003.

FINDINGS OF FACT

1. Respondent holds a license to practice medicine and surgery in the Commonwealth of Pennsylvania, license no. MD-030063-L, issued June 27, 1968.

(Board records)

2. At all times relevant to this action Respondent maintained an office for the practice of medicine limited to psychiatry in Philadelphia. (Exhibits C-1, C-2, C-3, C-4; N.T. 5, 48-49)

3. Prior to January 1, 1997, Respondent had a professional liability insurance policy issued by the Physicians Insurance Company (PIC). (Exhibit C-5; N.T. 25)

4. As of January 1, 1997, PIC stopped writing professional liability insurance policies for physicians practicing in Pennsylvania. (N.T. 39, 52)

5. Respondent was unable to obtain professional liability insurance coverage from January 1, 1997, until July 28, 1998, when she became insured by the Pennsylvania Medical Society Liability Insurance Company (PMSLIC).³ (Exhibit C-5; N.T. 39-40, 43-45)

6. As a result of her inability to obtain professional liability insurance coverage from January 1, 1997, until July 28, 1998, Respondent did not pay the required annual surcharge into the CAT Fund. (Exhibit C-5)

³ Respondent testified that she had contacted several professional liability insurance carriers after learning that PIC would no longer provide coverage but her applications were all rejected due in part to a 1987 malpractice lawsuit which was still pending. (N.T. 39-40)

7. At the time she became insured by PMSLIC, Respondent was unable to obtain retroactive insurance coverage for the January 1, 1997 to July 28, 1998 period. (N.T. 40)

8. During the time Respondent had no professional liability insurance coverage in 1997 and 1998, Respondent suffered from a variety of debilitating medical conditions which required her to limit her practice to a part-time basis. (N.T. 39-41, 50-51)

9. Respondent's practice is limited to psychiatry and she does not perform any surgery. (N.T. 39, 49)

10. During the period of time she was not insured and thereafter, Respondent wrote letters to the CAT Fund and the Bureau of Professional and Occupational Affairs (BPOA) asking for instructions and assistance in obtaining malpractice insurance and paying her surcharge into the CAT Fund but she did not receive any response to her letters. (N.T.42-48, 60)

11. Respondent is currently seeing approximately 15 to 20 patients per week, and it would be a hardship to her patients if she was unable to continue practicing for any significant period of time. (N.T. 46-47, 63)

12. Respondent was served with the OSC filed in this matter and she attended the formal administrative hearing held in Harrisburg December 20, 2002. (N.T. 3)

CONCLUSIONS OF LAW

1. The Board has jurisdiction in this matter. (Finding of Fact no. 1)
2. Respondent has been afforded reasonable notice of the charges against her and an opportunity to be heard in this proceeding. (Finding of Fact no. 11)
3. Respondent's license is subject to suspension or revocation under section 701(f) of the HCSMA, 40 P.S. § 1301.701(f), substantially reenacted as section 711(c) of the MCARE Act, 40 P.S. § 1303.711(c), in that Respondent practiced medicine in Pennsylvania without having full professional liability insurance coverage for approximately 18 months in 1997 and 1998 in violation of the HCSMA at 40 P.S. § 1301.701(a), substantially reenacted as section 711(a) of the MCARE Act, 40 P.S. § 1303.711(a). (Findings of Fact nos. 2, 4, 5)
4. Respondent's license is subject to suspension or revocation under section 701(f) of the HCSMA, 40 P.S. § 1301.701(f), substantially reenacted as section 711(c) of the MCARE Act, 40 P.S. § 1303.711(c), in that Respondent did not pay the CAT Fund surcharge for the period of time she did not have malpractice insurance in 1997 and 1998 in violation of the HCSMA at 40 P.S. § 1301.701(e), substantially reenacted as section 712(d) of the MCARE Act, 40 P.S. § 1303.712(d). (Findings of Fact nos. 2, 4, 5, 6)
5. Respondent is subject to disciplinary action under section 41(6) of the Medical Practice Act, 63 P.S. § 422.41(6), in that Respondent violated regulations of the Board at 49 Pa. Code § 16.31-35 by not maintaining required professional liability

insurance for approximately 18 months in 1997 and 1988, and by not having paid the CAT Fund surcharge for that period. (Findings of Fact nos. 2, 4, 5, 6)

DISCUSSION

The facts alleged in the OSC are that Respondent practiced medicine for a period of approximately 18 months in 1997 and 1998 without professional liability insurance coverage as was required under the HCSMA and the Board's regulations. The Commonwealth's case at hearing consisted of the testimony of a Department of State investigator who obtained Respondent's appointment books for the period January 1, 1997, to July 28, 1998, pursuant to an investigative subpoena issued September 26, 2001, and a representative of the former CAT Fund who identified CAT Fund records which indicate a gap in Respondent's medical malpractice insurance coverage for the period January 1, 1997, to July 28, 1998. Respondent testified on her own behalf.

Respondent is a semi-retired psychiatrist who has been working part time for the past decade. At the end of 1996 her malpractice insurance carrier, PIC, stopped writing policies for Pennsylvania physicians. Respondent attempted to obtain malpractice coverage, contacting several insurers who all turned her down because of a malpractice action which was then pending. Beginning in approximately April 1997, the CAT Fund began sending correspondence to Respondent offering "to assist . . . in the process of identifying the reason(s)" why the CAT Fund's records indicated that she was not

insured.⁴ Respondent wrote back to the CAT Fund, asking for assistance in obtaining malpractice insurance and offering to pay the surcharge.⁵ Respondent received no response from the CAT Fund. In July 1998, Respondent ultimately obtained coverage from PMSLIC, though she was and remains unable to obtain tail coverage for the January 1997-July 1998 period when she was uninsured. She continues her limited, part-time practice, seeing 15 to 20 patients per week.

Section 701(a) of the HCSMA required all health care providers to "insure [their] professional liability only with an insurer licensed or approved by the Commonwealth of Pennsylvania, or provide proof of self-insurance" Subsection (d) created the CAT Fund which, under subsection (e)(1), was "funded by the levying of an annual surcharge . . . on all health care providers entitled to participate in the fund."⁶ Subsection (f) of section 701, 40 P.S. § 1301.701(f), provided as follows:

(f) The failure of any health care provider to comply with any of the provisions of this section or any of the rules and regulations issued by the director shall result in the suspension or revocation of the health care provider's license by the licensure board.⁷

⁴ Exhibit C-6a.

⁵ N.T. 43.

⁶ Section 701(a) of the repealed HCSMA was replaced by section 711(a) of the MCARE Act, which requires health care providers to "purchase medical professional liability insurance" from a licensed and approved insurer or provide self-insurance. Section 712 of the MCARE Act creates the MCARE Fund, funded by an assessment on participating health care providers, replacing the CAT Fund. 40 P.S. §§ 1303.711(a), .712(a) and (d).

⁷ Section 701(f) of the repealed HCSMA was replaced by section 711(c) of the MCARE Act, which provides in pertinent part as follows: "A health care provider's license shall be suspended or revoked by its licensure board or agency if the health care provider fails to comply with any of the provisions of this chapter." 40 P.S. § 1303.711(c).

At Count One, the Commonwealth charges that Respondent is subject to disciplinary action under section 701(f) of the HCSMA in that Respondent practiced medicine in Pennsylvania without having professional liability insurance coverage from January 1, 1997, to July 28, 1998, in violation of the requirement set forth at 40 P.S. § 1301.701(a). At Count Two, the Commonwealth charges that Respondent is also subject to disciplinary action under section 701(f) of the HCSMA in that she did not pay the required CAT Fund surcharge during that time period. The Commonwealth charges at Count Three and Count Four of its OSC that Respondent is also subject to disciplinary action under section 41(6) of the Medical Practice Act, 63 P.S. § 422.41(6), which provides as follows:

§ 422.41 Reasons for refusal, revocation, suspension or other corrective actions against a licensee or certificate holder

The board shall have authority to impose disciplinary or corrective measures on a board-regulated practitioner for any or all of the following reasons:

* * *

(6) Violating a lawful regulation promulgated by the board or violating a lawful order of the board previously entered by the board in a disciplinary proceeding.

The Commonwealth alleges specifically that Respondent violated the Board's regulations at 49 Pa. Code § 16.31-.35 by not maintaining required professional liability insurance

coverage and by not paying the CAT Fund surcharge for the period in which she was insured.⁸

Respondent, in her answer and at hearing, admitted that she did practice medicine without being covered by professional liability insurance from January 1997 to July 1998, and that she consequently did not pay the CAT Fund surcharge during that period. Respondent testified in mitigation that she lost her coverage when her insurer stopped writing policies in Pennsylvania and she was unable to find an insurer who would issue her a policy, despite contacting a number of insurers, the CAT Fund and the BPOA. She also stated that her practice was and remains part-time, and that the limited number of patients she sees would suffer harm if she were forced to stop practicing. The sole issue presented is what sanction under the applicable statutes and regulations is appropriate.

At the conclusion of the hearing, the Commonwealth recommended that Respondent's license be suspended for a period of three months and that a civil penalty in the amount of \$9,000.00 be levied in accordance with section 39(b) of the Medical Practice Act, 63 P.S. § 422.39(b).⁹ The Commonwealth based its civil penalty recommendation on an estimate by the MCARE Fund (formerly the CAT Fund), that

⁸ The Board's regulations at 49 Pa. Code § 16.31-.34 address the malpractice insurance requirements of the former HCSMA with § 16.35 specifically providing that failure of a licensee to comply with the HCSMA "will result in the suspension or revocation of a license after a formal hearing."

⁹ Section 39(b) of the Medical Practice Act authorizes the Board to levy a civil penalty of up to \$1,000.00 on any licensee who violates any provision of the Act. The Board has interpreted this provision to permit a civil penalty of \$1,000.00 per violation.

\$9,000.00 would represent the approximate amount of money Respondent would have paid for insurance plus the surcharge for the January 1997-July 1998 period had she been able to find insurance, based on rates for a part-time psychiatry practice without surgery.¹⁰ The Commonwealth also noted that a period of suspension is mandatory under section 701(f) of the HCSMA as well as under section 711(c) of the MCARE Act. The Commonwealth's civil penalty recommendation takes into consideration Respondent's proffered testimony in mitigation and is reasonable. As for the term of suspension, Respondent has offered persuasive testimony that she accepts responsibility for her failure to obtain professional liability insurance in a prompt manner after her former insurer stopped insuring Pennsylvania physicians in 1997, and that she is unlikely to repeat her violations of the laws of the Commonwealth requiring such insurance. Moreover, it appears from the record that the greater likelihood of harm to the public would come from an order imposing a lengthy suspension of Respondent's license, which would prove harmful to Respondent's small group of current patients. Accordingly, the following order shall issue.

¹⁰N.T. 62-63.

**COMMONWEALTH OF PENNSYLVANIA
DEPARTMENT OF STATE
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| Commonwealth of Pennsylvania | : | |
| Bureau of Professional and Occupational Affairs | : | |
| | : | Docket no. 1100-49-02 |
| vs. | : | DOS File no. 01-49-03563 |
| | : | |
| Charlotte Lilly Blyn, M.D., | : | |
| Respondent | : | |

ORDER

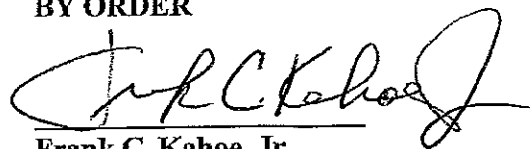
NOW, this 26th day of February, 2004, upon consideration of the foregoing findings of fact, conclusions of law and discussion, it is hereby **ORDERED** as follows:

1. The license issued to Respondent **Charlotte Lilly Blyn, M.D.**, license no. **MD-030063-L**, shall be **suspended** for a period of **ten (10) days** in accordance with section 701(f) of the Health Care Services Malpractice Act, 40 P.S. § 1301.701(f)(*repealed*), and section 711(c) of the MCARE Act, 40 P.S. § 1303.711(c); and

2. A **civil penalty** in the amount of **\$9,000.00** shall be levied upon Respondent in accordance with section 39(b) of the Medical Practice Act of 1985, 63 P.S. § 422.39(b).

This order shall be effective twenty days from the date of mailing unless otherwise ordered by the State Board of Medicine.

BY ORDER



**Frank C. Kahoe, Jr.
Hearing Examiner**

Date of Mailing: 2.27.04

For the Commonwealth:

Karen L. Stevens, Esquire
OFFICE OF GENERAL COUNSEL
2601 North Third Street, P.O. Box 2649
Harrisburg, PA 17105-2649

Respondent pro se:

Charlotte Lilly Blyn, M.D.
Park Towne Place, Suite E-106
220 Benjamin Franklin Boulevard
Philadelphia, PA 19130

NOTICE

(Medicine)

REHEARING AND/OR RECONSIDERATION BY HEARING EXAMINER

An application to the hearing examiner for rehearing or reconsideration may be filed by a party within 15 days after the mailing date of this adjudication and order. The application must be captioned "Application for Rehearing," "Application for Reconsideration," or "Application for Rehearing or Reconsideration." It must state specifically and concisely, in numbered paragraphs, the grounds relied upon in seeking rehearing or reconsideration, including any alleged error in the adjudication. If the adjudication is sought to be vacated, reversed or modified by reason of matters that have arisen since the hearing and decision, the matters relied upon by the petitioner must be set forth in the application.

APPEAL TO BOARD

An application to the State Board of Medicine for review of the hearing examiner's adjudication and order must be filed by a party within 20 days after the mailing date of this adjudication and order. The application should be captioned "Application for Review." It must state specifically and concisely, in numbered paragraphs, the grounds relied upon in seeking the Board's review of the hearing examiner's decision, including any alleged error in the adjudication. Within an application for review a party may request that the Board hear additional argument and take additional evidence.

An application to the Board to review the hearing examiner's decision may be filed irrespective of whether an application to the hearing examiner for rehearing or reconsideration is filed.

STAY OF HEARING EXAMINER'S ORDER

Neither the filing of an application for rehearing and/or reconsideration nor the filing of an application for review operates as a stay of the hearing examiner's order. To seek a stay of a hearing's examiner's order, the party must file an application for stay directed to the hearing examiner. If the hearing examiner denies the stay, an application for stay directed to the Board may then be filed.

FILING AND SERVICE

An original and three copies of all applications shall be filed with Deanna S. Walton, Prothonotary, P O Box 2649, Harrisburg, Pennsylvania 17105-2649. A copy of applications must also be served on all parties.

Applications must be received for filing by the Prothonotary within the time limits specified. The date of receipt at the office of Prothonotary, and not the date of deposit in the mail, is determinative. The filing of an application for rehearing and/or reconsideration does not extend, or in any other manner affect, the time period in which an application for review may be filed.

STATUTES AND REGULATIONS

Statutes and regulations relevant to post-hearing procedures are the Medical Practice Act of 1985 at 63 P.S. §§422.1-422.45; Section 905 of the Health Care Services Malpractice Act, 40 P.S. §1301.905; and the General Rules of Administrative Practice and Procedure at 1 Pa. Code Part II, to the extent the rules are consistent with regulations promulgated by the Board or provisions of the Medical Practice Act of 1985 or the Health Care Services Malpractice Act.

Not having an attorney will not be accepted as an excuse for failing to comply with the requirements contained in these notice provisions or relevant statutes and regulations.