

COPY

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

Department of State

2011 APR -5 AM 10:44

PROTHONOTARY

Commonwealth of Pennsylvania, :
Bureau of Professional and : File No. 09-49-04040
Occupational Affairs :
v. : Docket No. 2100-49-10
Mariano A. Galang III, M.D., :
Respondent :

FINAL ORDER

AND NOW, this 5th day of April 2011, noting that neither party filed an application for review and that the State Board of Medicine (Board) did not issue a Notice of Intent to Review, in accordance with 1 Pa. Code § 35.226(a)(3) and 49 Pa. Code § 16.57, the hearing examiner's adjudication and order dated March 7, 2011, appended to this order as Annex A, is now the FINAL ORDER of the Board in this proceeding.

This order is retroactive to March 28, 2011, twenty days from the date of mailing of the Hearing Examiner's Adjudication and Order.

BUREAU OF PROFESSIONAL &
OCCUPATIONAL AFFAIRS

STATE BOARD OF MEDICINE



THOMAS J. WEAVER
ACTING COMMISSIONER

CAROL E. ROSE, M.D.
CHAIRPERSON

Respondent's Address: Mariano A. Galang III, M.D.
3430 Newburg Road, Suite 212
Louisville, KY 40218

Prosecuting Attorney: Keith E. Bashore, Esquire

Board counsel: Steven R. Dade, Esquire

Date of mailing: April 5, 2011

PROTHONOTARY
COMMONWEALTH OF PENNSYLVANIA
DEPARTMENT OF STATE 2011 MAR -7 PM 1:53
BEFORE THE STATE BOARD OF MEDICINE

Department of State

Commonwealth of Pennsylvania,
Bureau of Professional and
Occupational Affairs

v.

Mariano A. Galang III, M.D.,
Respondent

Docket No. 2100-49-10
File No. 09-49-04040

ADJUDICATION AND ORDER

C. Michael Weaver
Hearing Examiner

Commonwealth of Pennsylvania
GOVERNOR'S OFFICE OF GENERAL COUNSEL
Department of State
P.O. Box 2649
Harrisburg, PA 17105-2649
(717) 772-2686

DATE DISTRIBUTED 3/7/11
PROSECUTION _____
COUNSEL _____
HEARING EXAMINER _____

ANNEX A

HISTORY

This matter comes before the hearing examiner for the State Board of Medicine (Board) on an Order to Show Cause (OSC) filed by the Commonwealth on November 4, 2010, alleging that Respondent, Mariano A. Galang III, M.D., License No. MD041063E, is subject to disciplinary action under Section 422.41(4) of the Medical Practice Act of 1985 (Act), Act of December 20, 1985, P.L. 457, *as amended*, at 63 P.S. § 422.41(4), as a result of disciplinary action taken against Respondent's license to practice medicine by the proper licensing authority of another state (Kentucky and New York).

The Commonwealth mailed the OSC on November 4, 2010, by certified mail, return receipt requested, and by first class mail, postage prepaid to Respondent's last known address on file with the Board at 3101 Savannah Drive, Jeffersonville, IN 47130, and to Respondent at 3430 Newburg Road, Suite 212, Louisville, KY 40218. Respondent received the OSC on November 8, 2010, at his address at the Louisville, KY address, as evidenced by Postal Form 3811, Article #7010 1670 0000.1226 0825. Service of the OSC upon Respondent was in accordance with the requirements of Section 33.31 of the General Rules of Administrative Practice and Procedure (GRAPP), 1 Pa. Code § 33.31. Respondent failed to file an answer or otherwise respond to the OSC.

On December 10, 2010, the Commonwealth filed a Motion for Entry of Default and to Deem Facts Admitted (MDFA), which was mailed to Respondent by first class mail, postage prepaid at 3430 Newburg Road, Suite 212, Louisville, KY 40218. However, the Respondent did not respond to the MDFA. As of the date of this Adjudication and Order, Respondent has not filed an answer to either the OSC or the MDFA.

FINDINGS OF FACT

1. Respondent holds a license to practice medicine and surgery in the Commonwealth of Pennsylvania, License No. MD041063E, which was originally issued on August 4, 1988. (Board records, OSC ¶ 1)

2. Respondent's license was active through December 31, 1990, but may be renewed, reactivated or reinstated thereafter upon the filing of the appropriate documentation and payment of the necessary fees. (Board records, OSC ¶ 2)

3. At all times pertinent to the Factual Allegations, Respondent held a license to practice medicine and surgery in the Commonwealth of Pennsylvania. (OSC ¶ 3)

4. Respondent's address on file with the Board is 3101 Savannah Drive, Jeffersonville, IN 47130, but the prosecuting attorney has reason to believe that Respondent's current address is 3430 Newburg Road, Suite 212, Louisville, KY 40218. (OSC ¶ 4)

5. On July 16, 2009, the Kentucky Board of Medical Licensure approved an Agreed Order In Re: The License to Practice Medicine in the Commonwealth of Kentucky held by Mariano A. Galang, M.D., License No. 27611. (OSC ¶ 6; OSC at attached Exhibit A)

6. As a result, the Kentucky Board of Medical Licensure placed specific terms and conditions on Respondent's license to practice medicine in the Commonwealth of Kentucky for a period of five (5) years. (OSC ¶ 8; OSC at attached Exhibit A)

7. On October 23, 2010, the New York State Board for Professional Medical Conduct approved a Surrender Order In the Matter of Mariano Abaya Galang III, M.D. at BPMC No. #10-205, based on the Kentucky disciplinary action. (OSC ¶¶ 9 and 11; OSC at attached Exhibit B)

8. On November 4, 2010, the Commonwealth filed an OSC against Respondent, setting forth allegations that he violated the Medical Practice Act at 63 P.S. § 422.41(4), in that

Respondent had disciplinary action taken by the proper licensing authority of another state (Kentucky and New York) against his license to practice the profession. (MDFA ¶ 1)

9. On November 4, 2010, the Commonwealth sent the OSC via certified mail, return receipt requested, and first class mail, postage prepaid, to Respondent at his address on file with the Board at 3101 Savannah Drive, Jeffersonville, IN 47130, as well as his address at 3430 Newburg Road, Suite 212, Louisville, KY 40218. (MDFA ¶ 2; OSC Certificate of Service)

10. The OSC mailed via certified mail to the Respondent at 3430 Newburg Road, Suite 212, Louisville, KY 40218, was received by Respondent on November 8, 2010, as evidenced by Postal Form 3811, Article #7010 1670 0000 1226 0825. (MDFA ¶ 3; MDFA attached Exhibit A)

11. The OSC directed the Respondent to file an Answer within thirty (30) days of its date. (MDFA ¶ 4)

12. As of the date of this decision, Respondent has not filed an Answer to the OSC. (MDFA ¶ 5)

13. On December 10, 2010, the Commonwealth filed an MDFA in this matter and served it on Respondent via first class mail, postage prepaid at 3430 Newburg Road, Suite 212, Louisville, KY 40218. (MDFA; MDFA Certificate of Service)

14. As of the date of this decision, Respondent has not responded to the Commonwealth's MDFA. (Docket No. 2100-49-10)

15. Respondent was served with the OSC, MDFA, and all subsequent pleadings, orders, and notices filed of record in this matter. (Docket No. 2100-49-10)

CONCLUSIONS OF LAW

1. The Board has jurisdiction in this matter. (Findings of Fact, Nos. 1-3)
2. Respondent has been afforded reasonable notice of the charges against him and an opportunity to be heard in this proceeding, in accordance with the Administrative Agency Law, 2 Pa. C.S. § 504. (Findings of Fact, Nos. 8-15)
3. Respondent is subject to disciplinary action under Section 41(4) of the Act, 63 P.S. § 422.41(4), in that disciplinary action was taken against Respondent's license to practice medicine by the proper licensing authority of Kentucky; the disciplinary action taken by New York is based on the Kentucky disciplinary action. . (Findings of Fact, Nos. 5-7)
4. The Board is authorized to impose disciplinary or corrective measures or a civil penalty pursuant to Section 42 of the Act, 63 P.S. § 422.42.

DISCUSSION

Motion for Default

Constitutionally adequate notice of administrative action is notice that is “reasonably calculated, under all the circumstances, to apprise interested parties of the pendency of the action and afford them an opportunity to present their objections.” *Clark v. Commonwealth, Dep’t of Pub. Welfare*, 427 A.2d 712, 714 (Pa. Cmwlth. 1981), quoting *Mullane v. Central Hanover Bank and Trust Co.*, 339 U.S. 306, 314 (1950). “This requirement is satisfied when notice of the action is mailed to the interested party’s last known address.” *Milford Township Bd. of Supervisors v. Department of Envtl. Resources*, 644 A.2d 217, 219 (Pa. Cmwlth. 1994), citing *Kobylski v. Milk Marketing Bd.*, 516 A.2d 75 (Pa. Cmwlth. 1986). “[P]ersonal receipt of the notice is not required when the notice was mailed to the party’s last known address.” *Id.*

Respondent’s address on file with the Board is 3101 Savannah Drive, Jeffersonville, IN 47130; however, the prosecuting attorney has reason to believe that Respondent’s current address is 3430 Newburg Road, Suite 212, Louisville, KY 40218. The Commonwealth mailed the OSC on November 4, 2010, by certified mail, return receipt requested, and by first class mail, postage prepaid, to Respondent at the above addresses. The OSC mailed via certified mail, return receipt requested, to Respondent’s address at 3430 Newburg Road, Suite 212, Louisville, KY 40218, was received on November 8, 2010, as evidenced by Postal Form 3811, Article #7010 1670 0000 1226 0825. Therefore, the OSC is presumed to have been delivered and received by Respondent. Respondent was therefore provided with constitutionally adequate notice of administrative action.

The OSC clearly and specifically stated the charges against Respondent. The OSC directed Respondent to file a written answer within thirty (30) days or risk disciplinary action without a hearing. The OSC explained the procedures to request a hearing. Further, the OSC

warned Respondent that if he failed to request a hearing, Respondent would be deemed to have waived his right to a hearing and final judgment may be entered without a hearing. Nevertheless, Respondent did not file an answer and did not request a hearing. The GRAPP provides, in pertinent part, that:

§ 35.37. Answers to orders to show cause.

A person upon whom an order to show cause has been served . . . shall, if directed so to do, respond to the same by filing within the time specified in the order an answer in writing A respondent failing to file [an] answer within the time allowed shall be deemed in default, and relevant facts stated in the order to show cause may be deemed admitted.

1 Pa. Code § 35.37.

On December 10, 2010, the Commonwealth filed an MDFA, in accordance with the GRAPP at 1 Pa. Code § 35.37, and mailed it via first class mail, postage prepaid to Respondent at 3430 Newburg Road, Suite 212, Louisville, KY 40218. The MDFA has not been returned to the Commonwealth. Respondent has not filed a response to the MDFA.

Accordingly, the Commonwealth's MDFA is granted and the allegations in the OSC are deemed admitted in accordance with 1 Pa. Code § 35.37.

Violation

Count One of the OSC is brought under Section 41(4) of the Act, 63 P.S. § 422.41(4), which provides in pertinent part 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:

* * *

(4) Having a license or other authorization to practice the profession revoked or suspended or having other disciplinary action taken, . . . by a proper licensing authority of another state,

territory, possession or country, or a branch of the Federal Government.

* * *

The Commonwealth charged that Respondent is subject to disciplinary action because Respondent had disciplinary action taken against Respondent's license by the proper licensing authority of another state (Kentucky and New York). Specifically, on July 16, 2009, the Kentucky Board of Medical Licensure approved an Agreed Order In Re: The License to Practice Medicine in the Commonwealth of Kentucky held by Mariano A. Galang, M.D., License No. 27611. The Agreed Order provided that Respondent was subject to disciplinary action pursuant to the Kentucky Revised Statutes, KRS §§ 311.595(5) and (9), in that Respondent was found by the Board to have had sexual contact . . . with a patient while the patient was under the care of the physician, and that Respondent engaged in dishonorable, unethical, or unprofessional conduct of a character likely to deceive, defraud, or harm the public or any member thereof. Respondent allegedly engaged in sexual conduct with two (2) patients on two (2) separate occasions while the patients were under his care. Respondent was required to complete a "Maintaining Proper Boundaries" course, which he completed on February 20, 2009.

Due to his conduct, the Kentucky Board of Medical Licensure subjected Respondent's license to certain terms and conditions for a period of five (5) years after the filing of the Agreed Order. The conditions included requiring Respondent to be accompanied by a chaperone when interacting with female patients, maintaining a log which documents each interaction Respondent has with female patients, prohibiting Respondent from engaging in further sexual contact with any patient, and observing the proper physician-patients boundaries with all female patients, whether current or former patients. Respondent has the ability to request termination of the

Agreed Order after the conclusion of three (3) years, so long as he is in full compliance with the terms and conditions set forth in the Agreed Order.

On October 23, 2010, the New York State Board for Professional Medical Conduct approved a Surrender Order In the Matter of Mariano Abaya Galang III, M.D. at BPMC No. #10-205. Respondent requested permission to surrender his license in New York because of the allegations set forth in the Kentucky Board of Medical Licensure's Complaint against Respondent. The New York State Board for Professional Medical Conduct approved the surrender of Respondent's license.

Accordingly, based upon the terms of the Agreed Order approved by the Kentucky Board of Medical Licensure, Respondent is subject to disciplinary action under Section 41(4) of the Act, 63 P.S. § 422.41(4), in that disciplinary action was taken against Respondent's license to practice medicine by the proper licensing authority of Kentucky.

Sanction

The Commonwealth has met its burden of proof and the only matter left to be determined is the sanction to be imposed. The Board is authorized to impose disciplinary or corrective measures or a civil penalty pursuant to Section 42 of the Act, 63 P.S. §422.42¹. The Board is also authorized to impose a civil penalty of up to \$10,000.00 on any current licensee who

¹ § 422.42. Types of corrective action.

(a) **Authorized actions.**—When the board is empowered to take disciplinary or corrective action against a board-regulated practitioner under the provisions of this act or pursuant to other statutory authority, the board may:

- (1) Deny the application for a license, certificate or any other privilege granted by the board.
- (2) Administer a public reprimand with or without probation.
- (3) Revoke, suspend, limit or otherwise restrict a license or certificate.
- (4) Require the board-regulated practitioner to submit to the care, counseling or treatment of a physician or a psychologist designated by the board.
- (5) Require the board-regulated practitioner to submit to take refresher educational courses.
- (6) Stay enforcement of any suspension, other than that imposed in accordance with Section 40 [pertaining to temporary and automatic suspensions], and place a board-regulated practitioner on probation with the right to vacate the probationary order for noncompliance.
- (7) Impose a monetary penalty in accordance with this act.

violates any provision of the Act². The Pennsylvania Supreme Court has recognized that “[r]eciprocal discipline prevents licensed professionals from violating ethical rules, being disciplined, and then transferring to a new jurisdiction to continue to practice with an unblemished record of ethical conduct.” *Khan v. State Bd. of Auctioneer Examiners*, 842 A.2d 936, 944 (Pa. 2004). In determining a sanction, the primary consideration is that the Board is charged with the responsibility and authority to oversee the profession and to regulate and license professionals to protect the public health and safety. *Barran v. State Bd. of Medicine*, 670 A.2d 765, 767 (Pa. Cmwlth. 1996), *appeal denied*, 679 A.2d 230 (Pa. 1996).

Based upon the Agreed Order, the Kentucky Board of Medical Licensure found that sufficient disciplinary action consisted of placing Respondent’s license to practice medicine and surgery on specific terms and conditions for a period of five (5) years. Respondent voluntarily surrendered his license in the State of New York because of the allegations set forth by the Kentucky Board of Medical Licensure. Respondent’s voluntary surrender of his license normally works as a revocation because he can no longer practice in the State of New York. However, Respondent has an active license in the Commonwealth of Kentucky with specific restrictions placed upon that license. Upon consideration of the Agreed Order in the Commonwealth of Kentucky, the Surrender Order in the State of New York, and in the absence of any mitigating evidence in this case, the Board’s obligation to protect the health and safety of the public is best carried out by indefinitely suspending Respondent’s license in Pennsylvania until such time as Respondent is able to provide documentary evidence that the Kentucky Board of Medical Licensure has reinstated Respondent’s license without restrictions. Due to the nature of the allegations against Respondent in Kentucky, an indefinite suspension will alert

² Additionally, a maximum civil penalty of up to one thousand dollars (\$1,000.00) for each and every violation of the Act is authorized under Section 39(b) of the Act, 63 P.S. § 422.39(b).

Pennsylvania citizens to the fact that disciplinary action of a similar nature was taken against Respondent's medical license in Kentucky. Respondent will be unable to practice medicine in Pennsylvania until he provides documentary evidence that the Kentucky Board of Medical Licensure is satisfied that he may practice medicine with an unrestricted license. In light of the indefinite suspension, a civil penalty is not necessary in this case.

Accordingly, based upon the above findings of fact, conclusions of law and discussion, the following order shall issue:

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

Commonwealth of Pennsylvania,
Bureau of Professional and
Occupational Affairs.

v.

Mariano A. Galang III, M.D.,
Respondent

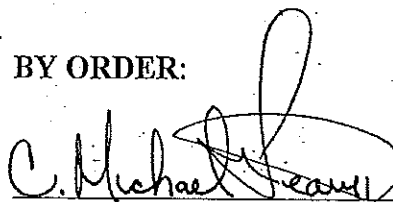
Docket No. 2100-49-10
File No. 09-49-04040

ORDER

NOW, this 7th day of March 2011, upon consideration of the foregoing findings of fact, conclusions of law and discussion, Respondent, Mariano A. Galang III, M.D., License No. MD041063E, is subject to disciplinary action under Section 41(4) of the Act, 63 P.S. § 422.41(4), it is hereby **ORDERED** that Respondent's license to practice medicine and surgery is **INDEFINITELY SUSPENDED** until such time as Respondent provides documentary evidence satisfactory to the Board that the Kentucky Board of Medical Licensure has reinstated Respondent's license to practice medicine without restriction in that state.

This Order shall take effect twenty (20) days from the date of mailing shown below, unless otherwise ordered by the State Board of Medicine.

BY ORDER:


C. Michael Weaver
Hearing Examiner

Prosecuting Attorney:

Keith E. Bashore, Esquire
Commonwealth of Pennsylvania
GOVERNOR'S OFFICE OF GENERAL COUNSEL
Department of State
P.O. Box 2649
Harrisburg, PA 17105-2649

Respondent:

Mariano A. Galang III, M.D.
3430 Newburg Road, Suite 212
Louisville, KY 40218

Date of mailing: March 8, 2011

NOTICE

The attached Final Order represents the final agency decision in this matter. It may be appealed to the Commonwealth Court of Pennsylvania by the filing of a Petition for Review with that Court within 30 days after the entry of the order in accordance with the Pennsylvania Rules of Appellate Procedure. See Chapter 15 of the Pennsylvania Rules of Appellate Procedure entitled "Judicial Review of Governmental Determinations," Pa. R.A.P 1501 – 1561. Please note: An order is entered on the date it is mailed. If you take an appeal to the Commonwealth Court, you must serve the Board with a copy of your Petition for Review. The agency contact for receiving service of such an appeal is:

Board Counsel
P.O. Box 2649
Harrisburg, PA 17105-2649

The name of the individual Board Counsel is identified on the Final Order.