

COPY

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

Department of State

2014 APR -4 AM 9:23

PROTHONOTARY

Commonwealth of Pennsylvania, :
Bureau of Professional and :
Occupational Affairs :
v. :
Louis Jay Frank, M.D., :
Respondent :

File No. 11-49-09811

Docket No. 0241-49-11


FINAL ORDER

AND NOW, this 4th day of April, 2014, 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 11, 2014, appended to this order as **Appendix A**, is now the **FINAL ORDER** of the Board in this proceeding.

This order shall be effective immediately.

BUREAU OF PROFESSIONAL &
OCCUPATIONAL AFFAIRS

STATE BOARD OF MEDICINE



TRAVIS N. GERY, ESQ.
COMMISSIONER



ANDREW J. BEHNKE, MD
CHAIR

Respondent's Address:

Louis Jay Frank, M.D.
458 Elizabeth Avenue, Suite 3
Somerset, NJ 08873-5110

Prosecuting attorney:

Ashley B. Goshert, Esquire

Board counsel:

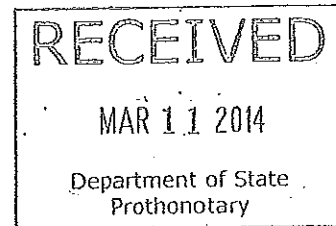
Wesley J. Rish, Esquire

Date of mailing:

April 4, 2014

APPENDIX A

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



Commonwealth of Pennsylvania,
Bureau of Professional and
Occupational Affairs

v.

Louis Jay Frank, M.D.,
Respondent

Docket No. 0241-49-11
File No. 11-49-09811

ADJUDICATION AND ORDER

Suzanne Rauer
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 3/11/14
PROSECUTION _____
COUNSEL X
HEARING EXAMINER _____
OTHER _____

HISTORY

This matter comes before the hearing examiner for the State Board of Medicine (Board) on a two (2) count Order to Show Cause (OSC) filed by the Commonwealth on February 7, 2012, alleging that Respondent, Louis Jay Frank, M.D., 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 (Vermont). Respondent is also charged with violation of Section 903(2) of the Mcare Act, 40 P.S. § 1303.903(2), in that Respondent failed to report information regarding disciplinary action taken against Respondent by a health care licensing authority of another state within sixty (60) days after its occurrence.

The Commonwealth mailed the OSC by certified mail, return receipt requested and by first class mail, postage prepaid to Respondent at several addresses without success. Finally, on January 10, 2013, the Commonwealth served the OSC upon the Respondent by mailing on copy via certified mail, return receipt requested and another copy via first class mail, postage prepaid, to the Respondent at: 458 Elizabeth Avenue, Suite 3, Somerset, NJ 08873-5110. Respondent received the OSC on January 15, 2013 as evidenced by Postal Form 3811, Article #7196 9009 3500 3054 0863.¹ The Commonwealth accomplished service of its OTSC in accordance with the requirements of the General Rules of Administrative Practice and Procedure, 1 Pa. Code § 31.1 *et seq.*, at 1 Pa. Code § 33.31.

The OSC directed Respondent to file a written answer within thirty days of the date on the OSC, and specifically advised that the factual allegations may be deemed admitted if Respondent fails to file an Answer within the time period allowed. Respondent was also advised

¹ The certified mail receipt was signed by Meena R. Shah at that Somerset, NJ address.

that if he fails to file an Answer, the State Board of Medicine (Board) may revoke, suspend, or impose other restrictions against his medical license; and the Board may also impose a civil penalty of up to \$10,000.00 for each violation of the Act. Respondent did not respond to the OSC.

On August 26, 2013, the Commonwealth filed a Motion to Enter Default and Deem Facts Admitted (MDFA), which was mailed to Respondent by first class mail, postage prepaid, at 458 Elizabeth Avenue, Suite 3, Somerset, NJ 08873-5110. Respondent did not file a response to the MDFA, and on October 16, 2013, an Order Deeming Facts Admitted and Entering Judgment by Default was issued. The Order deemed the factual allegations in the OSC admitted and entered judgment by default against Respondent and advised him that an Adjudication and Order setting forth appropriate sanctions will be issued in due course. To date, Respondent has not responded to the OSC or to the MDFA.

This matter is now ripe for disposition.

FINDINGS OF FACT

1. Respondent holds a license to practice medicine and surgery in the Commonwealth of Pennsylvania, License No. MD026520E, which was originally issued on March 25, 1982. (OSC ¶ 1-2)

2. Respondent's license expired December 31, 1996, and may be renewed upon filing of the appropriate documentations and payment of the necessary fees. (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 last known address is 458 Elizabeth Avenue, Suite 3, Somerset, NJ 08873-5110. (Docket No. 0241-49-11, Certificate of Service dated January 13, 2013 and Postal Form 3811, Article #7196 9009 3500 3054 0863)

5. On July 7, 2011, the Vermont Board of Medical Practice issued a Board Review and Order finding that Respondent engaged in repeated acts of unprofessional conduct, in violation of 26 V.S.A. §1354(b)(2), in that between 2008 and 2011, Respondent engaged in repeated acts of reckless, often dangerous, prescribing practices including writing more than 130 false prescriptions, treating patients with methadone for their opiate addiction outside of controlled clinical setting, and other inappropriate prescribing of methadone. (OSC ¶ 6; OSC Exhibit A)

6. The Vermont Medical Board concluded that Respondent represents a danger to the public as long as he continues to practice medicine. (OSC ¶ 7; OSC Exhibit A)

7. The Vermont Medical Board revoked Respondent's license to practice medicine for a period of at least seven (7) years. (OSC ¶ 8; OSC Exhibit A)

8. Respondent failed to report the July 7, 2011 disciplinary action of the Vermont Medical Board to the Pennsylvania State Board of Medicine within 60 days after its occurrence.

(OSC ¶ 12)

9. On February 7, 2012, the Commonwealth filed an OSC setting forth allegations that Respondent had disciplinary action taken by the proper licensing authority of another state (Vermont) against his license to practice the profession and that Respondent failed to report information regarding the disciplinary action taken against his license to the health care licensing authority of another state within sixty (60) days after its occurrence, in violation of 63 P.S. § 422.41(4) and 40 P.S. § 1303.903(2). (OSC and MDFA ¶ 1)

10. The Commonwealth mailed the OSC to Respondent via certified mail, return receipt requested and via first class mail, postage prepaid to Respondent's address at 458 Elizabeth Avenue, Suite 3, Somerset, NJ 08873-5110. (OSC Certificate of Service dated January 15, 2013; MDFA ¶ 5)

11. Respondent received the OSC on January 15, 2013, as evidenced by the signature on Postal Form 3811, Article #7196 9009 3500 3054 0863. (MDFA ¶ 6; MDFA Exhibit 2)

12. The certified mail receipt was signed on behalf of Respondent by a "Meena Shah," who supplied an address of "458 Elizabeth Avenue, Suite 3" in Somerset, NJ (MDFA Exhibit 2)

13. As of the date of this decision, Respondent has not filed an Answer to the OSC. (Docket No. 0241-49-11)

14. On August 26, 2013, the Commonwealth filed an MDFA in this matter and served it via first class mail, postage prepaid, on Respondent the following day at 458 Elizabeth Avenue, Suite 3, Somerset, NJ 08873-5110. (MDFA Certificate of Service)

15. On October 16, 2013, an Order Deeming Facts Admitted and Entering Judgment by Default was issued, deeming the factual allegations in the OSC admitted and entering judgment by default. (Docket No. 0241-49-11)

16. As of the date of this decision, Respondent has not responded to the Commonwealth's MDFA. (Docket No. 0241-49-11)

17. Respondent was served with the OSC, MDFA, and all subsequent pleadings, orders, and notices filed of record in this matter. (Docket No. 0241-49-11)

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. 9-17)
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 another state (Vermont). (Findings of Fact, Nos. 5-7)
4. Respondent is subject to disciplinary action under Section 908 of the MCARE Act, 40 P.S. § 1303.908, in that Respondent failed to report information regarding disciplinary action taken against the Respondent by a health care licensing authority of another state within sixty (60) days after its occurrence, in violation of Section 903(2) of the MCARE Act, 40 P.S. § 1303.903(2). (Findings of Fact, No. 8)

DISCUSSION

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 his license by the proper licensing authority of Vermont. On July 7, 2011, the Vermont Medical Board issued a Board Review and Order finding Respondent in violation of 26 V.S.A. §1354(b)(2) for engaging in repeated acts of unprofessional conduct in his prescribing practices and concluded that Respondent was a danger to the public. The Vermont Board revoked Respondent's license to practice medicine for a period of at least seven (7) years:

Accordingly, based upon the terms of the Board Review and Order approved and adopted by the Vermont Medical Board, 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 another state.

Count Two of the OSC is brought under Section 903(2) of the Mcare Act, 40 P.S. § 1303.903(2), which provides in pertinent part:

§ 1303.903. Reporting

A physician shall report to the State Board of Medicine or the State Board of Osteopathic Medicine, as appropriate, within 60 days of the occurrence of any of the following:

* * *

- (2) Information regarding disciplinary action taken against the physician by a health care licensing authority of another state.

* * *

Respondent did not report the July 7, 2011 disciplinary action of the Vermont Medical Board to the Pennsylvania State Board of Medicine within 60 days after its occurrence. Accordingly, Respondent violated Section 903(2) of the Mcare Act, 40 P.S. § 1303.903(2), in that Respondent failed to report information regarding disciplinary action taken against Respondent by a health care licensing authority of another state within sixty (60) days after its occurrence, and is subject to disciplinary action under Section 908 of the Mcare Act, 40 P.S. § 1303.908.

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. § 422.42.² The Board is also authorized to impose a civil penalty of up to \$10,000.00 on any current licensee who

² § 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 Act or the Mcare Act, pursuant to Section 908 of the MCARE Act, 40 P.S. § 1303.908.³

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 addition, 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). With public protection in mind, the Board also considers the seriousness of the offenses and any mitigating evidence. The Board has no mitigating evidence to consider in this case.

The Board has a responsibility to the public to impose a disciplinary sanction that recognizes the seriousness of the revocation of Respondent’s medical license in Vermont, and that safeguards the safety of the citizens of this Commonwealth. The Vermont Board’s revocation of Respondent’s medical license represents the opinion of that board that Respondent is no longer fit or qualified to hold the license. Indisputably, Respondent breached the public’s trust and that of the medical profession by engaging in repeated acts of unprofessional conduct regarding his prescribing practices. Given that Respondent has had his license revoked in Vermont and has opted not to defend this action before the Pennsylvania Board, and in fulfillment of the Board’s duty to protect the public health and safety of the citizens of this Commonwealth, Respondent’s license should be revoked.⁴

³ 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).

⁴ The Hearing Examiner recognizes that the Board is well within its authority to also impose against the Respondent the maximum civil penalty for each violation at issue. Given that Respondent has not practiced in the Commonwealth since 1996, a civil penalty is not essential to the Board’s interest to safeguard Pennsylvania citizens.

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.

Louis Jay Frank, M.D.,
Respondent

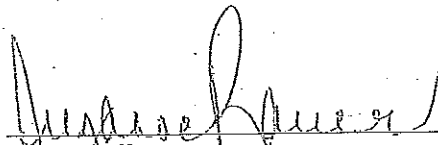
Docket No. 0241-49-11
File No. 11-49-09811

ORDER

AND NOW, this 10th day of March, 2014, upon consideration of the foregoing findings of fact, conclusions of law and discussion, it is hereby ORDERED that the license to practice medicine and surgery issued to Respondent; Louis Jay Frank, M.D., license no. MD026520E, is REVOKED.

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:


Suzanne Rauer
Hearing Examiner

Prosecuting Attorney:

Ashley B. Goshert
Commonwealth of Pennsylvania
GOVERNOR'S OFFICE OF GENERAL COUNSEL
Department of State
P.O. Box 2649
Harrisburg, PA 17105-2649

Respondent:

Louis Jay Frank, M.D.
458 Elizabeth Avenue, Suite 3
Somerset, NJ 08873-5110

Date of mailing:

3/11/14

NOTICE

REHEARING AND/OR RECONSIDERATION

A party may file an application for rehearing or reconsideration within 15 days of 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 of the date of mailing of this adjudication and order. The application must 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 for rehearing or reconsideration is filed. However, 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.

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 the hearing examiner's order, the party must file an application for stay directed to the Board.

FILING AND SERVICE

An original and three (3) copies of all applications shall be filed with:

Prothonotary
P.O. Box 2649
Harrisburg, PA 17105-2649

A copy of all 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.

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.