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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

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Docket No. 1776-49-15
File No. 13-49-07428

v.

Naseem M. Chaudry, M.D.,
Respondent

FINAL ORDER

AND NOW, this 1st day of March 2016, 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 February 1, 2016, appended to this order as Attachment "A", is now the FINAL ORDER of the Board in this proceeding.

This order shall be effective immediately.

ADOPTED BY ORDER OF:

BUREAU OF PROFESSIONAL AND
OCCUPATIONAL AFFAIRS

STATE BOARD OF MEDICINE



IAN J. HARLOW
COMMISSIONER



MARILYN J. HEINE, M.D.
CHAIR

Respondent's address:

Naseem M. Chaudry, M.D.
410 York Street
Bolingbrook, IL 60440-1464

Prosecuting Attorney:

Mark R. Zogby, Esquire

Board Counsel:

Wesley J. Rish, Esquire

Date of Mailing:

March 1, 2016

Attachment A

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Prothonotary

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

Commonwealth of Pennsylvania, :
Bureau of Professional and :
Occupational Affairs :
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v. :
 :
Naseem M. Chaudhry, M.D., :
Respondent :

Docket No. 1776-49-15
File No. 13-49-07428

ADJUDICATION AND ORDER

Ruth D. Dunnewold
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 2/1/16
PROSECUTION _____
COUNSEL _____
HEARING EXAMINER _____
OTHER _____

HISTORY

This matter comes before a hearing examiner for the Department of State on a three-count order to show cause filed October 6, 2015, in which the Commonwealth alleged that Naseem M. Chaudhry, M.D. (“Respondent”), is subject to disciplinary action by the State Board of Medicine (“Board”) under the Medical Practice Act (“Act”)¹ at sections 41(3) and (4), 63 P.S. § 422.41(3) and (4), as well as under the Criminal History Record Information Act (“CHRIA”),² at 18 Pa.C.S. § 9124(c)(1), and Act 48 of 1993 (“Act 48”).³ The charges stem from Respondent’s having been convicted in Federal court of health care fraud, a felony, and because his license or other authorization to practice the profession revoked by the State Medical Board of Ohio (“Ohio Board”).

The Commonwealth served the order to show cause upon Respondent on October 13, 2015, in accordance with the requirements of § 33.31 of the General Rules of Administrative Practice and Procedure (“GRAPP”), 1 Pa. Code § 33.31. The order to show cause directed Respondent to file an answer thereto within thirty days of the date of the order to show cause. However, Respondent did not do so.

On December 2, 2015, the Commonwealth filed a Motion to Deem Facts Admitted and Issue Adjudication (“MDFA”). The MDFA was served upon Respondent on December 2, 2015, at the same address at which the order to show cause had been served. As of the date of this adjudication and order, Respondent has not filed an answer to either the order to show cause or the MDFA.

¹Act of December 20, 1985, P.L. 457, No. 112, *as amended*, 63 P.S. § 422.1 *et seq.*

²18 Pa. C.S.A. § 9101 *et seq.*

³Act of July 2, 1993, P.L. 345, No. 48, *as amended*, 63 P.S. § 2201 *et seq.*

FINDINGS OF FACT

1. Respondent holds a license to practice medicine and surgery in the Commonwealth of Pennsylvania, license number MD039005E. Official Notice of Board records.⁴
2. Respondent's license was originally issued on August 11, 1987 and expired on December 31, 1990. Board records.
3. Absent further action by the Board, the Respondent's license may be renewed, reactivated or reinstated upon the filing of the appropriate documentation and payment of the necessary fees. *Id.*
4. At all times pertinent to the Factual Allegations, Respondent held a license to practice as a medical physician and surgeon in the Commonwealth of Pennsylvania. *Id.*
5. Respondent's last known address on file with the Board is 919 Morningstar Drive, Akron, OH 44307 but service of the order to show cause was made on him at 410 York Street, Bolingbrook, IL 60440-1464. *Id.*
6. On June 6, 2006, a criminal indictment was filed in the United States District Court for the Northern District of Illinois, Eastern Division, at docket number 1:06-cr-00469 ("Federal criminal matter"), charging Respondent with 14 counts of health care fraud and aiding and abetting, in violation of 18 U.S.C. §§ 1347 and 2, all felonies. Order to show cause at paragraphs 7, 10, and attached Exhibit A.

⁴A licensing board may take official notice of its own records. *Gleeson v. State Bd. of Medicine*, 900 A.2d 430, 440 (Pa. Cmwlth. 2006), *appeal denied*, 917 A.2d 316 (Pa. 2007). All subsequent such references will be cited as "Board records."

7. On April 14, 2010, in the Federal criminal matter, Respondent pled guilty to one count of health care fraud and aiding and abetting, in violation of 18 U.S.C. §§ 1347 and 2, a felony. Order to show cause at paragraphs 8, 10, and attached Exhibit A.

8. On June 29, 2012, judgment was entered against Respondent in the Federal criminal matter and on July 2, 2012, Respondent was sentenced in the Federal criminal matter to the following:

- a. 37 months of imprisonment;
- b. 2 years of supervised release;
- c. Payment of an assessment of \$100; and
- d. Payment of restitution in the amount of \$428,884.

Order to show cause at paragraphs 9, 10, and attached Exhibit A.

9. By Order dated August 14, 2013, at Case No. 12-CRF-144 (“Ohio disciplinary action”), the State Medical Board of Ohio (“Ohio Board”) permanently revoked Respondent’s certificate to practice medicine and surgery in the State of Ohio. Order to show cause at paragraphs 11, 12, and attached Exhibit B.

10. The Ohio disciplinary action was based upon Respondent’s guilty plea to a felony in the Federal criminal matter, as well as Respondent’s plea of no contest to, and being found guilty, in the Court of Common Pleas of Franklin County, Ohio, of workers’ compensation fraud, in violation of Ohio Revised Code § 2913.48, which constituted a misdemeanor committed in the course of practice. *Id.*

11. On October 6, 2015, the Commonwealth filed an order to show cause charging that Respondent is subject to the imposition of disciplinary sanctions under the Act at section 41(3) and (4), 63 P.S. § 422.41(3) and (4), as well as under the CHRIA, at 18 Pa.C.S. §

9124(c)(1), because Respondent has been convicted in Federal court of health care fraud, a felony, and because his license or other authorization to practice the profession revoked by the proper licensing authority of another state, Ohio. Board records at File No. 13-49-07428, Docket No. 1776-49-15.

12. On October 6, 2015, the Commonwealth served a copy of the order to show cause upon Respondent by mailing one copy via certified mail, under United States Postal Service Certified Mail™ item number 9171969009350108143149, and another copy via first class mail, to Respondent at 410 York Street, Bolingbrook, IL 60440-1464. *Id.*

13. On October 13, 2015, the order to show cause was delivered to Respondent at 410 York Street, Bolingbrook, IL 60440-1464, as evidenced by the signature on United States Postal Service Certified Mail™ item number 9171969009350108143149. MDFA at paragraphs 3, 4, and attached Exhibit B.

14. The order to show cause directed Respondent to file an Answer within 30 days of its date. Board records at File No. 13-49-07428, Docket No. 1776-49-15; MDFA at paragraph 5.

15. As of the date of the MDFA's filing, Respondent had not filed an answer to the order to show cause. Board records at File No. 13-49-07428, Docket No. 1776-49-15; MDFA at paragraph 6.

16. The MDFA was granted by Order dated December 15, 2015. Board records at File No. 13-49-07428, Docket No. 1776-49-15.

17. As of the date of this Adjudication and Order, Respondent has not responded to either the order to show cause or the MDFA. *Id.*

18. Respondent has been served with the order to show cause and all subsequent notices, documents and pleadings filed in this matter. *Id.*

CONCLUSIONS OF LAW

1. The Board has jurisdiction in this matter. Findings of Fact 1 – 4.
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. Finding of Fact 18.
3. Respondent is subject to discipline under section 41(3) of the Law, 63 P.S. § 422.41(3), because he was convicted of a felony in Federal court. Findings of Fact 6 – 8.
4. Under the CHRIA at 18 Pa.C.S. § 9124(c)(1), Respondent is subject to the suspension or revocation of his license because he was convicted of a felony in Federal court. Findings of Fact 6 – 8.
5. Respondent is subject to discipline under section 41(4) of the Act, 63 P.S. § 422.41(4), in that the proper licensing authority of another state, Ohio, disciplined Respondent's license or other authorization to practice medicine in that state. Findings of Fact 9, 10.

DISCUSSION

Service/Motion for Default

The Commonwealth served the order to show cause on Respondent by certified mail, , under United States Postal Service Certified Mail™ item number 9171969009350108143149, and another copy via first class mail, to Respondent at 410 York Street, Bolingbrook, IL 60440-1464, the address at which the Commonwealth believed Respondent could be found. Respondent received the order to show cause on October 13, 2015, at 410 York Street, Bolingbrook, IL 60440-1464, as evidenced by the signature on United States Postal Service Certified Mail™ item number 9171969009350108143149.

In the Notice attached to the order to show cause, Respondent was notified that the Commonwealth had instituted formal disciplinary action against him and that failure to respond to the order to show cause could result in a default judgment against him. Respondent was notified that he could lose his license to practice medicine in the Commonwealth. Respondent was directed to file an answer to the allegations in the order to show cause within 30 days, and was advised that if he did not file an answer to those allegations, disciplinary action could be taken against him without a hearing. Under a section captioned "Procedures" in the order to show cause, Respondent was ordered to file a written answer to the order to show cause within 30 days, and was advised that failure to do so would result in issuance of an order imposing a penalty against his license.

On December 2, 2015, the Commonwealth filed its MDFA due to Respondent's failure to file an answer to the order to show cause in the time specified. The MDFA was sent via first class mail, postage prepaid, to the same address at which Respondent received the order to show cause. As of the date of this adjudication, Respondent has filed neither an answer to the order to

show cause nor a response to the MDFA.

Based upon his failure to respond to the order to show cause, Respondent was determined to be in default in accordance with the General Rules of Administrative Practice and Procedure at 1 Pa. Code § 35.37. That rule provides in pertinent part as follows:

§ 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.

Based on 1 Pa. Code §35.37, the Commonwealth's MDFA was granted, and the allegations in the order to show cause deemed admitted, by Order dated December 15, 2015.

The procedural history set forth above satisfactorily demonstrates that Respondent has been afforded adequate notice of the charges, as well as an opportunity to be heard with regard to the charges. It is therefore proper now to proceed to enter a final order in this disciplinary proceeding without a hearing. *See Celane v. Insurance Commissioner*, 415 A.2d 130 (Pa. Cmwlth. 1980).

Violations

Counts One and Three of the order to show cause fall under subsections 41(3) and (4) of the Act, 63 P.S. § 422.41(3) and (4), which provide as follows:

§ 422.41. Reasons for refusal, revocation, or suspension of license

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

* * *

(3) Being convicted of a felony or being convicted of a misdemeanor relating to a health profession or receiving probation without verdict, disposition in lieu of trial or an Accelerated

Rehabilitative Disposition in the disposition of felony charges, in the courts of this Commonwealth, a Federal court or a court of any other state, territory or country.

(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 or country, or a branch of the Federal Government.

* * *

Count Two of the order to show cause falls under the CHRIA at 18 Pa.C.S. § 9124(c)(1), which provides as follows:

§ 9124. Use of records by licensing agencies

* * *

(c) State action authorized. – Boards, commissions or departments of the Commonwealth authorized to license, certify, register or permit the practice of trades, occupations or professions may refuse to grant or renew, or may suspend or revoke any license, certificate, registration or permit for the following causes:

(1) Where the applicant has been convicted of a felony.

* * *

The Commonwealth's evidence consisted of certified copies of the court records from the Federal criminal matter, documenting Respondent's guilty plea to and sentencing for health care fraud and aiding and abetting, a felony; as well as certified copies of the Ohio disciplinary action, in which the Ohio Board permanently revoked Respondent's certificate to practice medicine and surgery in the State of Ohio.

The action in the Federal criminal matter is a conviction because, unless there is a different definition of "convicted" in the Act or the CHRIA, which is not the case here, once judgment of sentence has been entered on a plea of guilty, an individual has been *convicted* of the offense on which the plea was entered. See *Duda v. State Board of Pharmacy*, 393 A.2d 57,

59 n.1 (Pa. Cmwlth. 1978); *Gaynor v. Com., State Board of Pharmacy*, 513 A.2d 521, 523 (Pa. Cmwlth. 1986). Accordingly, since Respondent pled guilty to and was sentenced on that verdict of guilt, he has been convicted of the felony to which he pled guilty.

The certified court documents in the Federal criminal matter, therefore, demonstrate conclusively that Respondent was convicted of a felony in Federal court. Likewise, the certified documents from the Ohio disciplinary matter demonstrate conclusively that the Ohio Board disciplined Respondent's license in Ohio. Therefore, the Commonwealth has met its burden of proof⁵ as to the charges set forth in the order to show cause.

Sanction

The Board has a duty to protect the health and safety of the public. Under professional licensing statutes such as the Act, 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 Board of Medicine*, 670 A.2d 765, 767 (Pa. Cmwlth. 1996), *appeal denied* 679 A.2d 230 (Pa. 1996). When a state licensing board confers a professional license, it represents the opinion of that State that the license holder has met the enumerated qualifications for that license, in terms of education, experience, honesty and integrity. *Khan v. State Board of Auctioneer Examiners*, 842 A.2d 936, 944 (Pa. 2004). It follows that, when a licensing board takes away a license, it represents the opinion of that State that the license holder is no longer qualified for the license due to a lack of education, experience, honesty or integrity.

⁵The degree of proof required to establish a case before an administrative tribunal in an action of this nature is a preponderance of the evidence. *Lansberry v. Pennsylvania Public Utility Commission*, 578 A.2d 600, 602 (Pa. Cmwlth. 1990). A preponderance of the evidence is generally understood to mean that the evidence demonstrates a fact is more likely to be true than not to be true, or if the burden were viewed as a balance scale, the evidence in support of the Commonwealth's case must weigh slightly more than the opposing evidence. *Se-Ling Hosiery, Inc. v. Margulies*, 70 A.2d 854, 856 (Pa. 1949). The Commonwealth therefore has the burden of proving the charges against Respondent with evidence that is substantial and legally credible, not by mere "suspicion" or by only a "scintilla" of evidence. *Lansberry*, 578 A.2d at 602.

The seriousness of Respondent's offense may be gauged by the Ohio Board's action. The Ohio Board permanently revoked Respondent's license in that State. That is the most severe form of discipline available to a licensing authority, and the action clearly represents the opinion of the Ohio Board that Respondent is no longer qualified for to hold a license due to deficiencies in Respondent's education, experience, honesty or integrity.

Also, with regard to Respondent's felony health care fraud conviction, case law supports the determination that offenses such as Medicare fraud fall within the doctor-patient relationship. *Catena v. State Board of Medical Education and Licensure*, 411 A.2d 869, 871 (Pa. Cmwlth. 1979). The fact that Respondent's conviction is related to the practice of medicine is an aggravating factor, because such activities by a licensee cast the entire profession into disrepute and constitute a serious departure from the conduct expected of the Commonwealth's professional licensees. *Khan, supra*, 842 A.2d at 944 (serious aberrations in professional conduct violate the trust conferred upon each licensee when his or her license is issued).

For a violation of the Act, the Board is authorized to impose disciplinary or corrective measures pursuant to section 42(a), 63 P.S. § 422.42(a);⁶ the authorized disciplinary and

⁶§ 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 take refresher educational courses.
 - (6) Stay enforcement of any suspension, other than that imposed in accordance with section 40, and place a board-regulated practitioner on probation with the right to vacate the probationary order for noncompliance.

corrective measures include revocation of the license. Likewise, the CHRIA authorizes the Board to suspend or revoke Respondent's license based on his having been convicted of a felony. Based upon all of the foregoing, revocation is the appropriate penalty to protect the Commonwealth's citizens. Accordingly, the following order shall issue:

-
- (7) Impose a monetary penalty in accordance with this act.

* * *

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

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

v.

**Naseem M. Chaudhry, M.D.,
Respondent**

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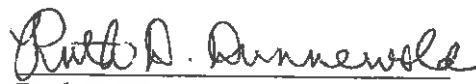
**Docket No. 1776-49-15
File No. 13-49-07428**

ORDER

AND NOW, this 1st day of February, 2016, upon consideration of the foregoing findings of fact, conclusions of law and discussion, it is **ORDERED** that the license to practice medicine and surgery issued to Respondent, **Naseem M. Chaudhry, M.D.**, license no. MD039005E, is **REVOKED**.

This order shall take effect 20 days from the date of mailing unless otherwise ordered by the State Board of Medicine.

BY ORDER:


Ruth D. Dunnewold
Hearing Examiner

For the Commonwealth: Mark R. Zogby, Esquire
GOVERNOR'S OFFICE OF GENERAL COUNSEL
DEPARTMENT OF STATE OFFICE OF CHIEF COUNSEL
PROSECUTION DIVISION
P.O. Box 69521
Harrisburg, PA 17106-9521

For Respondent: Naseem M. Chaudhry, M.D.
410 York Street
Bolingbrook, IL 60440-1464

Date of mailing: 2/1/16

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 69523
Harrisburg, PA 17106-9523

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