

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

File No. 14-49-03748
Docket No. 0736-49-15

v.

Scharazard Lee Gray, M.D.,
Respondent

FINAL ORDER ADOPTING HEARING EXAMINER'S ADJUDICATION AND ORDER


AND NOW, this 25th day of June 2018, having reviewed the reviewed the entire record of this case established before the hearing examiner and noting that although the Board filed a Notice of Intent to Review neither party filed a brief on exceptions **ADOPTS** the hearing examiner's Adjudication and Order as the Final Order in this case. A copy of the Adjudication and Order is appended as Attachment A.

This order is effective immediately.

BUREAU OF PROFESSIONAL &
OCCUPATIONAL AFFAIRS


IAN J. HARLOW
COMMISSIONER

BY ORDER:
STATE BOARD OF MEDICINE


KEITH E. LOISELLE
CHAIR

For Respondent:

Scharazard Lee Gray, M.D.
6400 581st Street SE
Menoken, ND 58558

For the Commonwealth:

Jason T. Anderson, Esquire

Board Counsel:

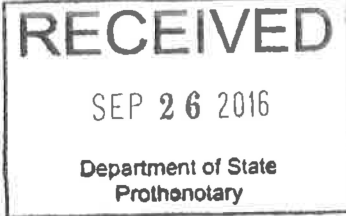
Wesley J. Rish, Esquire

Date of mailing:

June 25, 2018

Attachment A

COPY



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

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

v.

**Scharazard Lee Gray, M.D.,
Respondent**

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**Docket No. 0736-49-15
File No. 14-49-03748**

ADJUDICATION AND ORDER

**Ruth D. Dunnewold
Hearing Examiner**

**COMMONWEALTH OF PENNSYLVANIA
GOVERNOR'S OFFICE OF GENERAL COUNSEL
DEPARTMENT OF STATE
OFFICE OF HEARING EXAMINERS
P.O. Box 2649
Harrisburg, PA 17105-2649**

DATE DISTRIBUTED 9-26-16
PROSECUTION _____
COUNSEL _____
HEARING EXAMINER _____
OTHER _____

HISTORY

This matter comes before a hearing examiner for the Department of State on a single-count amended order to show cause filed July 7, 2016, in which the Commonwealth alleged that Scharazard Lee Gray, M.D. ("Respondent"), is subject to disciplinary action by the State Board of Medicine ("Board") under the Medical Practice Act ("Act"), Act of December 20, 1985, P.L. 457, No. 112, *as amended*, 63 P.S. § 422.1 *et seq.*, at section 41(4), 63 P.S. § 422.41(4), as a result of having had a license or other authorization to practice the profession disciplined by the North Dakota Board of Medical Examiners ("North Dakota Board").

On July 20, 2016, Respondent filed an answer to the order to show cause and requested that he be permitted to participate in the hearing via telephone, which request was granted by Order of the same date. Chief Hearing Examiner Jackie Wiest Lutz conducted the hearing on July 26, 2016, at which Respondent appeared and participated via telephone. He was not represented by counsel. The Commonwealth was represented by Certified Legal Intern Daniel R. Schramm, under the supervision of Prosecuting Attorney Jason Anderson, Esquire. The parties did not elect to file post-hearing briefs, and the record was closed with the filing of the hearing transcript on August 9, 2016.

FINDINGS OF FACT

1. Respondent holds a license to practice medicine and surgery in the Commonwealth of Pennsylvania, license number MD427277. Official notice of Board records;¹ Exhibit C-2, paragraph 1; Exhibit C-3, paragraph 1.²

2. Respondent's license was originally issued on August 8, 2005, is current through December 31, 2016, and absent further action by the Board, may be renewed, reactivated or reinstated upon the filing of the appropriate documentation and payment of the necessary fees. Board records; Exhibit C-2, paragraph 2; Exhibit C-3, paragraph 2.

3. At all times pertinent to the factual allegations, Respondent held a license to practice medicine and surgery in the Commonwealth of Pennsylvania. Board records; Exhibit C-2, paragraph 3; Exhibit C-3, paragraph 3.

4. Respondent's last known address on file with the Board is 6400 581st Street SE, Menoken, ND 58558. Board records; Exhibit C-2, paragraph 4; Exhibit C-3, paragraph 4.

5. At all relevant and material times, Respondent was authorized to practice as a physician in the State of North Dakota, license number 12015. Board records; Exhibit C-2, paragraph 6; Exhibit C-3, paragraph 6.

6. On or about July 25, 2014, the North Dakota Board, by way of Complaint, Stipulation and Order (collectively, the "North Dakota disciplinary action"), found Respondent

¹At the hearing, the Commonwealth asked that official notice be taken of the Board's licensing records pertaining to Respondent, and that request was granted. Notes of Testimony at 9. All subsequent such references will be cited as "Board records."

²Under the General Rules of Administrative Practice and Procedure ("General Rules"), 1 Pa. Code § 31.1 *et seq.*, at 1 Pa. Code § 35.125(d)(2), the pleadings may not be considered as evidence of fact unless they are offered and received in evidence under the General Rules. The Commonwealth offered them into evidence at the hearing, offering Respondent's answer for the purpose of any admissions made in it, and the pleadings were admitted. NT at 10 – 11. Accordingly, Exhibits C-1 and C-2, collectively, may be utilized as evidence of the facts set forth in them which Respondent has admitted, and they are cited for that purpose.

to be in violation of the laws, rules, code and/or regulations of the State of North Dakota because Respondent lacked appropriate documentation in medical records for diagnosis, testing and treatment of patients. Board records; Exhibit C-2, paragraph 7; Exhibit C-3, paragraph 7.

7. Pursuant to the North Dakota disciplinary action, Respondent's license in North Dakota was suspended for one year, with the suspension stayed for one year provided Respondent complied with the terms and conditions outlined in the Stipulation, including attending a North Dakota Board-approved course focusing on medical records, documenting that attendance within six months of entry of the North Dakota Board's Order, and payment of the costs of prosecution, not to exceed \$2000. Exhibit C-4.

8. Respondent has satisfied and fully complied with the requirements of the North Dakota disciplinary action. Notes of Testimony ("NT") at 15, 16, 17.

9. Respondent also holds licenses to practice medicine in South Dakota, which he obtained in 2010, and Florida, which he obtained in December 2015, after addressing the North Dakota disciplinary action with the Florida Board of Medicine. NT at 16, 18, 19.

10. Throughout the pendency of the North Dakota disciplinary action, Respondent's license in South Dakota remained fully unrestricted, unconditioned and unencumbered. NT at 16, 19.³

11. As of the date of the hearing, Respondent held fully active, unrestricted, unconditioned and unencumbered licenses in the four states in which he was licensed: North Dakota, South Dakota, Florida and Pennsylvania. NT at 18, 19.

³Respondent testified that his licenses in "all states" remained "fully unrestricted, unconditioned and unencumbered" throughout the disciplinary process in North Dakota, NT at 16, but given the fact that the North Dakota disciplinary action imposed a stayed suspension on his license in North Dakota and the Florida license was not issued until 2015, *after* Respondent addressed the North Dakota disciplinary action with the Florida Board, his statement is accurate only as to his South Dakota and Pennsylvania licenses. The continuing status of his Pennsylvania license is acknowledged in paragraphs 1 and 2 of the Findings of Fact.

12. Respondent takes full responsibility for his actions underlying the North Dakota disciplinary action, which arose because he had no medical records available during a Medicaid Fraud Inspection due to its occurring at a time when his business was in transition, his records were totally electronic, and he did not have time to contact the vendor to access those electronic records. NT at 14 – 15.

13. Respondent received the order to show cause and all subsequent notices, documents and pleadings filed in this matter; filed a response to the order to show cause, and was granted a hearing, at which he appeared and participated telephonically, without counsel. Docket No. 0736-49-15; NT at 5 and *passim*.

CONCLUSIONS OF LAW

1. The Board has jurisdiction in this matter. Findings of Fact 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. Finding of Fact 13.
3. 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, North Dakota, disciplined Respondent's license to practice medicine in that state. Findings of Fact 5 – 7.

DISCUSSION

Violations

This action is brought under subsection 41(4) of the Act, 63 P.S. § 422.41(4), which provides 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:

* * *

(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.

* * *

In a case of reciprocal disciplinary action such as this, it is the mere fact of disciplinary action against Respondent by the licensing authority of another state that authorizes the Board to impose a penalty. *Johnston v. Com., State Board of Medical Education and Licensure*, 410 A.2d 103, 106 (Pa. Cmwlth. 1980). The Commonwealth's evidence consisted of a certified copy of the North Dakota Board's Complaint, Stipulation and Order that comprise the North Dakota disciplinary action. Also, Respondent admitted that the North Dakota disciplinary action occurred.

The evidence proves that the North Dakota Board suspended Respondent's license for one year, with the suspension stayed for one year provided Respondent complied with the terms and conditions outlined in the Stipulation, including attending a North Dakota Board-approved course focusing on medical records, documenting that attendance within six months of entry of the North Dakota Board's Order, and payment of the costs of prosecution, not to exceed \$2000.

This evidence demonstrates conclusively that the North Dakota Board disciplined Respondent's license in North Dakota. Therefore, the Commonwealth has met its burden of proof⁴ as to the charge set forth in the order to show cause.

Sanction

For a violation of the Act, the Board is authorized to impose disciplinary or corrective measures or a civil penalty pursuant to § 42(a), 63 P.S. § 422.42(a), which provides as follows:

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

⁴The 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 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).

In determining an appropriate sanction, any evidence in mitigation or aggravation may be considered. Respondent did not dispute the North Dakota disciplinary action, but simply sought to explain what happened in order to demonstrate that it was not a matter warranting a severe sanction. By way of that explanation, he testified that the North Dakota disciplinary action arose out of the fact that he had no medical records available during a Medicaid Fraud Inspection due to its occurring at a time when his business was in transition, his records were totally electronic, and he did not have time to contact the vendor to access those electronic records.⁵ NT at 14 – 15. Respondent took full responsibility for his actions.

Respondent offered additional information by way of mitigation, indicating that he has satisfied and fully complied with the requirements of the North Dakota disciplinary action. Also, Respondent holds licenses to practice medicine in South Dakota, which he obtained in 2010, and Florida, which he obtained in December 2015, after addressing the North Dakota disciplinary action with the Florida Board of Medicine. Throughout the pendency of the North Dakota disciplinary action, Respondent's license in South Dakota remained fully unrestricted, unconditioned and unencumbered, and as of the date of the hearing, Respondent held fully active, unrestricted, unconditioned and unencumbered licenses in the four states in which he was licensed: North Dakota, South Dakota, Florida and Pennsylvania.

At the conclusion of the hearing, Respondent asked that this matter be dismissed, while the Commonwealth recommended that this Board impose upon Respondent a reprimand and a civil penalty of \$500. In addressing Respondent's request for dismissal, in light of the fact that Respondent does not dispute the fact that he was disciplined in North Dakota, as well as the fact that the Commonwealth has proved that discipline, dismissal of this action is not appropriate.

Furthermore, this Board has previously held that a physician violated the Board's regulation at 49 Pa. Code § 16.95(a), which requires a physician licensee to maintain medical records for patients, when the physician created records on an electronic database to which the physician lost access at one point. In that case, the Board concluded that the physician failed to maintain access to and control over his patients' medical records by allowing that to happen, thereby failing to "maintain" records as required by the regulation. *Karkalas v. State Board of Medicine*, 71 A.3d 395 (Pa Cmwlth. 2013). Since that violation is analogous to the violation underlying the North Dakota disciplinary action, discipline is warranted here.

However, the sanction imposed by the North Dakota was comparatively light, and there are some mitigating factors, as discussed above. In view of all of the circumstances, the Commonwealth's recommendation is reasonable. The recommended sanction will serve to remind Respondent, and other similarly situated licensees, of the responsibility to remain in good standing in all jurisdictions in which they are licensed. *C.f. Khan v. State Board of Auctioneer Examiners*, 842 A.2d 936, 944 (Pa. 2004). Moreover, those sanctions will protect the public by putting Pennsylvania's citizens on notice as to Respondent's disciplinary history. Accordingly, based upon the foregoing, the following order shall issue:

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

**Commonwealth of Pennsylvania,
Bureau of Professional and
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v.

**Scharazard Lee Gray, M.D.,
Respondent**

**Docket No. 0736-49-15
File No. 14-49-03748**

ORDER

AND NOW, this 26th day of **September, 2016**, upon consideration of the foregoing findings of fact, conclusions of law and discussion, it is **ORDERED** that Respondent, **Scharazard Lee Gray, M.D.**, license no. MD427277, is **REPRIMANDED** and shall pay a **CIVIL PENALTY** of **\$500** within 30 days of the date of the Final Order in this matter.

The civil penalty shall be paid by certified check, attorney's check or U.S. Postal Service money order, made payable to "Commonwealth of Pennsylvania," and shall be mailed to:

Board Counsel
State Board of Medicine
P.O. Box 69523
Harrisburg, PA 17106-9523

within 30 days of the date of the Final Order in this matter.

Should Respondent fail to pay the civil penalty of \$500 within 30 days of the date of the Final Order in this matter, his license to practice medicine and surgery in the Commonwealth, license no. MD427277, shall be **INDEFINITELY SUSPENDED** without the need for any further action by the Commonwealth and shall remain suspended until such time as Respondent pays the civil penalty in full.

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: Daniel R. Schramm, Certified Legal Intern
Jason T. Anderson, 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: Scharazard Lee Gray, M.D.
6400 581st Street SE
Menoken, ND 58558

Date of mailing: 9-26-16

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.



COMMONWEALTH OF PENNSYLVANIA
OFFICE OF GENERAL COUNSEL

Wesley J. Rish
Assistant Counsel

wrish@pa.gov
Counsel Division

June 25, 2018

VIA FIRST CLASS AND CERTIFIED MAIL

Scharazard Lee Gray, M.D.
6400 581st Street SE
Menoken, ND 58558

VIA INTEROFFICE MAIL

Jason T. Anderson, Esquire
P.O. Box 69521
Harrisburg, PA 17106-9521
Bridget Guilfoyle, Esquire

**RE: Final Order Adopting Hearing Examiner's Adjudication and Order:
Commonwealth of Pennsylvania, Bureau of Professional and
Occupational Affairs v. Scharazard Lee Gray, M.D.
File No. 14-49-03748
Docket No. 0736-49-15**

Dear Dr. Gray and Attorney Anderson:

Enclosed please find a final order that the State Board of Medicine issued in the above referenced matter.

Sincerely,

Wesley J. Rish, Counsel
State Board of Medicine

Enclosure

cc: Suzanne Zerbe, Board Administrator
State Board of Medicine

