GOVERNMENT OF THE DISTRICT OF COLUMBIA
BOARD OF MEDICINE

IN RE	**:**
	:
HAZEM GARADA, M.D.	**:**
Pending Application MD045223	**:**
Respondent	**:**

FINAL DECISION AND ORDER OF THE BOARD

This matter comes before the District of Columbia Board of Medicine (the "Board") pursuant to the Health Occupations Revision Act (HORA), D.C. Official Code § 3-1201.01 (2009). The Board has broad jurisdiction to regulate the practice of medicine and to impose a variety of disciplinary sanctions upon a finding of a violation of HORA. D.C. Official Code, § 3-1201.03; *Mannan v. District of Columbia of Medicine*, 558 A.2d 329,333 (D.C. 1989). The Council of the District of Columbia, in amending the HORA, "intended to strengthen enforcement of it licensing laws." *Davidson v. District of Columbia Board of Medicine*, 562 A.2d 109, 113 (D.C. 1989). And the HORA "was designed to 'address modern advances and community needs *with the paramount consideration of protecting public interest*.'" *Joseph v. District of Columbia Board of Medicine*, 587 A.2d 1085,1088 (D.C. 1991) (*quoting* Report of the D.C. Council on Consumer and Regulatory Affairs on Bill 6-317, at 7 (November 26, 1985)) (emphasis added by court).

D.C. Official Code § 3-1205.19 authorizes the Board to conduct hearings and issue final decisions. The Board may delegate its authority to conduct a hearing to an Administrative Law Judge (ALJ) (*See* D.C. Official Code § 3-1205.19(i); *see also* 17 DCMR § 4114, Hearings by Administrative Law Judges). The ALJ shall issue a recommended decision which the Board

may accept or reject in whole or in part in issuing its final decision. 17 DCMR § 4114. If a decision by the Board is adverse to the Applicant, it shall serve the Applicant with a copy of the decision and give the Applicant an opportunity to file exceptions, and written argument in support thereof, with the board within ten (10) days of the date of service. 17 DCMR 4114.7. The Board will consider any new exceptions and argument filed by Applicant in issuing its final decision. 17 DCMR 4114.8.

Background

In March 2017, Dr. Hazem Garada ("Applicant") submitted an application for a medical license in the District of Columbia. Upon review, the District of Columbia Board of Medicine (the Board) voted to deny the application. On September 27, 2017, the Board issued to Applicant a Notice of Intent to Deny Licensure (the Notice), concerning his District of Columbia medical license application. The Notice gave the following bases for denying the application:

1. Your license to practice a health occupation was revoked or suspended in another state and the basis of the license revocation or suspension would have caused a similar result in the District. In accordance with D.C. Official Code §§ 3-1205.03(c) and 3-1205.14(c)(1), the Board may deny your application for a license;
2. You are professionally incompetent in violation of D.C. Official Code § 3-1205.14(a)(5). In accordance with D.C. Official Code § 3-1205.14(c)(1), the Board may therefore deny your application for licensure;
3. You violated a District of Columbia of federal law, regulation, or rule related to the practice of a health profession or drugs, in violation of D.C. Official Code § 3-

1205.14(a)(25). In accordance with D.C. Official Code § 3-1205.14(c)(1), the Board may therefore deny your application for a license;

4. You committed fraud or made false claims in connection with the practice of an occupation regulated by this chapter, or relating to Medicaid, Medicare, or insurance in violation of D.C. Official Code § 3-1205.14(a)(45). In accordance with D.C. Official Code § 3-1205.14(c)(1), the Board may therefore deny your application for a license;

5. During the course of the practitioner-patient or patient-client relationship, you engaged in conduct of a sexual nature that a reasonable patient or client would consider lewd or offensive, in violation of D.C. Official Code § 3-1205.14(a)(23)(C). In accordance with D.C. Official Code § 3-1205.14(c)(1), the Board may therefore deny your application for a license;

6. As an applicant for licensure, you must meet the "general qualifications of applicants" under D.C. Official Code § 3-1205.03. You failed to establish to the Board's satisfaction that you possess the appropriate skills, knowledge, judgement, and character to practice medicine. In accordance with 17 DCMR § 4600.4 and D.C. Official Code § 3-1205.03, the Board may therefore deny your application for license.

These bases stemmed from multiple disciplinary actions taken against Applicant by other state licensing boards, a conviction for fraud stemming directly from his medical practice, the extended length of time Applicant had gone without practicing medicine, and the overall judgment and character Applicant has shown throughout his professional career. Applicant

submitted a timely request for a hearing and the Board elected to refer the hearing to the Office of Administrative Hearings (OAH).

The hearing in this matter took place on November 8, 2017 and November 15, 2017 before an Administrative Law Judge (ALJ) at OAH. The Board was represented by Assistant Attorneys General for the District of Columbia, Jessica Krupke and E. Louis R. Phillips. Aisha Nixon, a Licensing Specialist for the District of Columbia Department of Health, Board of Medicine, was the witness for the Department of Health (the Department) and the Board. Applicant was represented by himself and testified on his own behalf. Both the Board and Applicant admitted exhibits into evidence.

Although the ALJ was to issue a recommended decision pursuant to 17 DCMR § 4114.3, the ALJ issued a Final Order on February 22, 2019. Applicant appealed the Final Order to the D.C. Court of Appeals which on May 15, 2019, *sua sponte* dismissed the appeal and remanded the case to the ALJ to issue a recommended decision. The Recommended Decision was issued on June 5, 2019, *nunc pro tunc* to February 22, 2019. The ALJ identified the government as Respondent, and Respondent (Government) Exhibits ("RX") 200 through 208 were accepted into evidence[1]. The ALJ identified Applicant Garada as Petitioner, and Petitioner (Applicant's) Exhibit ("PX") 104 pp. 47-48, 84-97, 154-155, 156, and 206-206 were admitted into evidence. For the purposes of exhibit identification, the same identifiers are used for the exhibits from the hearing before the ALJ. On June 26, 2019, the Board considered the Recommended Decision and voted to accept it in full. (*See* 17 DCMR § 4114.5: A board may accept or reject the recommended decision of an ALJ in whole or in part.). A Proposed Final Decision and Order

[1] For the purposes of exhibit identification, the same identifiers are used for the exhibits from the hearing before the ALJ and for the exhibits introduced at the later hearing on October 26, 2022. It should be noted that the Board of Medicine considers Applicant Dr. Garada to be the Respondent in this action, but for clarity of discussion will refer to him as "Applicant" throughout the Order.

of The Board was provided to both parties on July 15, 2019[2]. Applicant timely filed multiple exceptions on July 25, 2019. The government did not provide any exceptions. The Board reviewed Applicant's exceptions at its Board meeting on March 31, 2021 and made findings of facts, addressing Applicant's exceptions as they were relevant. A Final Decision and Order of the Board ("2021 Final Order") denying Applicant's application for a license was issued on November 9, 2021. Applicant timely appealed the 2021 Final Order to the D.C. Court of Appeals.

In preparing its response to the appeal, the Board determined that its 2021 Final Order had failed to consider or apply the "Removing Barriers to Occupational Licensing for Returning Citizens Amendment Act of 2020," (D.C. Law 23-205, eff. Mar. 16, 2021) (the "2020 Act"), which went into effect shortly before the Board reviewed Applicant's application. That law required the Board to first consider whether an applicant is "otherwise qualified" to receive a medical license before considering any criminal convictions. D.C. Official Code § 3-1205.14(f)(1). Only if the Board determined that the applicant is "otherwise qualified," could the Board determine if any criminal convictions were "directly related to the occupation for which the license . . . is [being] sought," in accordance with the factors set out in D.C. Official Code § 3-1205.14(f)(1). Because the Board did not apply the 2020 Act in issuing its 2021 Final Order, the Board asked the Court of Appeals, through a consent motion, to vacate its 2021 Final Order and to remand to it "so that the Board may exercise its discretion in applying the effective

[2] Although the recording of the hearing before the ALJ was requested and compact discs were provided, the recording is incomprehensible. Therefore no transcripts of the hearing could be obtained.

law."[3] On June 27, 2022, the Court granted the motion and remanded to the Board "for further proceedings consistent with the statements made in Applicant's motion."[4]

The Board reviewed this case at its meeting on July 27, 2022. In accordance with the 2020 Act, the Board first sought to determine, without considering Applicant's criminal convictions, whether the Applicant was "otherwise qualified" to receive a license to practice medicine in the District of Columbia. The Board acknowledged that it could not disclaim all knowledge of Applicant's criminal history, but the Board excluded that history from its determination of whether Applicant was "otherwise qualified" to practice medicine. Specifically, the Board in its deliberation reviewed the Findings of Fact from its 2021 Final Order, as to which Applicant previously had a full opportunity to provide exceptions and as to which the Board had already responded, exclusive of any factual findings related to Applicant's convictions. Having excluded those findings from consideration, the Board concluded that Applicant was not "otherwise qualified" to practice medicine because the Board, in an exercise of its discretion, would deny Applicant a license based on the remaining Findings of Fact. The Board issued a revised Proposed Final Order to the parties on September 2, 2022, to which Applicant again timely filed exceptions.

However, before the Board could consider Applicant's exceptions, the "HIV/AIDS Data Privacy Protection Amendment Act of 2021," (D.C. Law 24-0170, eff. Sep. 21, 2022) ("the 2021 Act") substantively amended D.C. Code §§ 3-1205.03, 3-1205.14(a)(4) and (f). Specifically, and as relevant here, the 2021 Act removed the requirement that the applicant first be "otherwise qualified"[5] and allowed the Board to consider convictions that are "related" (instead of "directly

[3] *See* Consent Motion to Remand, *Hazem Garada v. D.C. Department of Health, Board of Medicine*, No. 21-AA-815, June 21, 2022.
[4] *See* Order, *Hazem Garada v. D.C. Department of Health, Board of Medicine*, No. 21-AA-815, June 27, 2022.
[5] *See* D.C. Law 23-205, Sec. 3(d)(3) for the original language of D.C. Code § 3-1205.14(f).

related") to the occupation for which the license is sought.[6] The law also mandates that the Board consider specific factors ("the (f) factors") when it considers a conviction in determining whether to deny an application.[7] The Board therefore held a hearing on October 26, 2022 and both parties presented evidence regarding the (f) factors. At that hearing, Board Exhibit A, government exhibits ("RX") 1 through 4 and Applicant exhibits ("PX") A through K were admitted into evidence[8]. Due to a delay in getting the transcript and a lack of quorum, the Board was not able to reach a determination on the (f) factors and the overall decision on the application until its meeting on April 26, 2023. The Board issued a Third Proposed Final Decision and Order of the Board to which the Respondent could, pursuant to 17 DCMR 4114.7, file exceptions. Respondent asked for and received an extension until August 4, 2023, to file exceptions. Respondent also submitted a request to submit the exhibits which had been excluded at the hearing on October 26, 2022. In response to that request, the Board allowed Respondent to submit an affidavit regarding the issues he wanted the Board to consider that he felt he had been

[6] *See* D.C. Code § 3-1205.14(a)(4): Has been convicted of an offense that is related to the occupation for which the license, registration or certification is sought or held[.]

[7] *See* D.C. Code § 3-1205.14(f): When determining whether to deny an application . . .regulated by a board for a conviction pursuant to this subsection, a board shall consider:
(1) Whether the offense is related to the occupation for which the license, registration or certification is sought or held by considering the duties and responsibilities of the health occupation;
(2) The nature and seriousness of the offense;
(3) The length of time that has elapsed since the offense was committed;
(4) The age of the person at the time the offense was committed;
(5) Any evidence produced by the applicant, licensee, registrant, person certified, or person permitted by this act to practice in the District concerning their rehabilitation and fitness including:
(A) Evidence as to whether the applicant, licensee, registrant, person certified, or person permitted by this act to practice in the District has recidivated; and
(B) Evidence demonstrating compliance with any terms and conditions or probation, supervised release, or parole;
(6) Evidence of work history, particularly any training or work experience related to the occupation; and
(7) Letters of reference.

[8] For ease of reference, the identifier "RX" is used for government exhibits introduced at the October 26, 2022, hearing, and "PX" is used for Applicant's exhibits in this Order, although in the transcript of the hearing they are identified as "OAG" Exhibits 1 – 4 and "Garada" Exhibits A – K.

unable to present at the October hearing. Respondent timely submitted that affidavit and his exceptions[9].

The Board now accepts in part the Recommended Decision of the ALJ, issues its Findings of Fact including findings in accordance with D.C. Code § 3-1205.14(f), and issues its Conclusions of Law. Respondent's exceptions and his affidavit are considered in this Final Decision and Order of the Board as discussed below.

Findings of Fact

1. Applicant obtained his M.D. degree from Kuwait University in 1988, completed an internal medicine residency at St. Barnabas Hospital in New York in 1994 (RX 200 p. 3), and began his practice of medicine in West Virginia under a visa sponsorship J-1 waiver program. (RX 200 p. 11). Applicant previously took exception to the Board's failure to credit him with two years of medical practice in Kuwait from approximately 1988 – 1990. The Board declined to address his practice in Kuwait, reasoning it occurred prior to his residency which finished in 1994, and it is Applicant's practice in the United States which is of primary relevance to his application. Therefore no change to this finding was made.

2. On January 10, 1994, the West Virginia Board of Medicine (West Virginia Board) issued Applicant a license to practice medicine in its jurisdiction. (RX 200 p. 26).

3. On November 7, 1996, the West Virginia Board suspended Applicant's license for sixty (60) days and required him to have a chaperone present when he treated female patients. This action became effective November 15, 1996 and was due to "Conduct Likely to Deceive or

[9] Respondent's Affidavit is titled Affidavit Statement July 20, 2023, Un redacted Version filed UNDER SEAL (emphasis in original). Similarly, Respondent's exceptions filing has a heading Extremely Sensitive: not for public use UNDER SEAL (emphasis in original). The Board lacks authority to place documents "under seal." Respondent is aware there is no authority to place documents under seal. *See, for example*, Order Denying Motion to Seal, *Garada v. DC Dept. of Health* (OAH 2017-DPH-00018, issued Oct. 27, 2017).

Defraud or Harm the Public, Sexual Misconduct, Unethical Conduct." (RX 200 p. 15; RX 206 and 207). More particularly, the West Virginia Board found that Applicant's conduct in the examination of two female patients constituted "exercising influence within a patient-physician relationship for the purpose of engaging a patient in sexual activity." (RX 207 pp.14 - 15). Applicant filed an exception that a peer review of his conduct in West Virginia found no boundary violations had occurred and that he had no other sexual misconduct allegations in his career. He also asserted that the West Virginia charge was in retaliation for being a "whistleblower." However, the ALJ found that Applicant did not dispute the evidence but instead argued during the hearing that his actions were unintentional. The case before the D.C. Board of Medicine is not an opportunity to relitigate the West Virginia case. Applicant also took exception to the finding that his West Virginia license was suspended for sixty (60) days rather than two (2) months. In fact, the West Virginia license was explicitly suspended for sixty (60) days. (RX 206 p.4). No changes were made to this finding of fact.

4. Applicant's West Virginia medical license lapsed and was deemed to have expired on June 30, 1996, but remained "encumbered." (RX 200 p. 26).

5. On March 18, 1994, the Kentucky Board of Medical Licensure (Kentucky Board) issued Applicant a license to practice medicine in its jurisdiction. (RX 200 p.24).

6. On February 28, 1995, the mother of a patient filed a grievance against Applicant alleging he provided inadequate emergency room medical care. (RX 201 p. 50). The Kentucky Board investigated the complaint and concluded that although Applicant's care was "barely adequate," and his physician note "inadequate," he did not violate the Kentucky Medical Practice Act and closed the case with no further action. (RX 201 p. 50; PX 104 p. 47). Applicant did not dispute the Board's finding that Kentucky did not find a violation and closed the complaint

against him without taking action. Instead he took exception to the fact that the Board did not include more information about the Kentucky finding, and in a later exception filing, again stated that the Kentucky Board found no violation of the Practice Act. The Board did not find additional information relevant to the decision. Because the Applicant did not actually dispute the finding of fact # 6, and because the Board did not find additional information relevant to its decision, no changes were made to this finding.

7. As of March 22, 2017, Applicant's medical license in Kentucky was deemed "inactive." (RX 200 p.24). Applicant took exception to the Board's Conclusion in the original Proposed Final Decision that all of Applicant's medical licenses in the United States had either been suspended or revoked. He is correct that his license from Kentucky was never suspended or revoked, and this finding was changed to reflect that correction.

8. On August 23, 1996, the State Medical Board of Ohio issued Applicant a license to practice. (RX 200 p. 27).

9. On or about June 9, 1998, the State Medical Board of Ohio "permanently revoked" Applicant's license. The revocation was "stayed" and his license was suspended "for an indefinite period of time, but not less than six (6) months." This action was taken as a result of Applicant's failure to report the West Virginia disciplinary investigation during the license application process, his failure to report the medical complaint filed against him in Kentucky, and the disciplinary action taken against his license in West Virginia. (RX 201 p. 42-63).

Applicant filed an exception to this finding asserting that the Board "deleted" facts about the Ohio disciplinary action. He claimed that the Ohio application required him to list any "*formal"* investigations of his license. However, the relevant question asks "Have you ever been notified of any investigation concerning you, or have you ever been notified of, any charges,

allegations, or complaints filed against you, with any board, bureau, department, agency, or other body…with respect to a medical license?" (emphasis added). Further, the Ohio hearing examiner explicitly found that the question did not contain the limiting word "formal." Dr. Garada answered "No" to this question on or about June 25, 1996 when he submitted his application to the Ohio Board. However, on May 29, 1995 he had submitted a written response to a complaint from the Kentucky Board of Medicine. (RX 201, pp. 57 – 58). The Ohio application also contained the common requirement, "You must immediately notify the State Medical Board of Ohio in writing of any changes to these answers of these questions that may be warranted prior to licensure being granted to you by the State Medical Board." The West Virginia Board issued a Complaint and Notice of Hearing to Dr. Garada on June 28, 1996, three days after he submitted his application. He did not inform the Ohio Board of this action. (RX 201 at p. 58).

Applicant also took exception to the finding in the original Proposed Final Decision that his Ohio license was suspended in 1998 for "failure to disclose the West Virginia action on his Ohio licensing application." He argued that his Ohio medical license was issued on August 23, 1996, and that the West Virginia license was suspended on November 7, 1996. Therefore, he could not report the West Virginia action on his Ohio application because he was licensed in Ohio before he was suspended in West Virginia. Applicant is correct that his Ohio license was not suspended for failure to disclose the West Virginia disciplinary action on his Ohio *application*; his license was suspended for failure to report the Kentucky investigation on the *initial application*, failure to report the West Virginia investigation during the *application process*, and failure to report the disciplinary *action* taken against his license by West Virginia. (RX 201 at pp. 57 – 50). Thus this finding was changed to clarify that the Ohio action was not

based on his failure to disclose his West Virginia suspension, but on the other failures to disclose and on the West Virginia suspension order.

10. On January 13, 1999, Applicant's Ohio License was reinstated on a 5-year probationary basis with conditions that included the requirement that he obtain board approval before practicing, that he have a chaperone present when treating female patients, and have his medical practice monitored. (RX 200 p. 16).

11. On September 29, 1995, the Commonwealth of Virginia (Virginia) issued a license to practice medicine to Applicant. (RX 200 p. 25).

12. On July 13, 1998, Virginia suspended Applicant's Virginia medical license upon being informed that Applicant's Ohio medical license was suspended by the State Medical Board of Ohio. (RX 201 p. 40).

13. On August 10, 1998, Virginia reinstated Applicant's Virginia medical license with a reprimand and the conditions that he submit an accurate Virginia medical application and pay a total fine of $2,000.00 for two fraudulent answers he provided on his 1995 Virginia medical license application regarding his practice in Kentucky and his termination from his position in a medical practice. (RX 201 pp. 34-36).

14. On December 16, 2003, the Virginia Board of Medicine (Virginia Board) reprimanded Applicant again for violating medical practice laws in Virginia by making false statements during a Department of Health Professionals' investigation and providing false information on his practitioner profile regarding a malpractice case, and the events and disciplinary actions in Ohio, and ordered him to pay a $1,000.00 fine. (RX 201 pp. 25-28).

15. On May 27, 2004, Applicant surrendered his Ohio Medical license for revocation in lieu of formal disciplinary proceedings, subsequent to a felony health care fraud conviction.

(RX 200 p. 17; RX 205, pp. 2-6). Applicant's Ohio license was permanently revoked on May 27, 2004. (RX 205 p.1). Applicant objects because he claims that he never practiced medicine in Ohio. The Board does not have evidence to dispute that he never practiced in Ohio but finds the assertion irrelevant. He was licensed to practice medicine in Ohio and that license was suspended and ultimately revoked. Therefore, no change has been made to this finding.

16. In the United States District Court for the Eastern District of Virginia (District Court), on June 4, 2004, Applicant pleaded guilty to felony health care fraud pursuant to 18 U.S.C. § 1347 which occurred "in or about January 2000 to in or about October 2003." (RX 208, pp. 1-3). Specifically, applicant "routinely submitted the HCFA-1500 claims form, which reflected that it was a comprehensive office visit, knowing that he did not see the patient on the date the claim for services were rendered or only having provided a prescription refill on that date." (RX 208 at p.3). In a resultant plea agreement Applicant agreed to be imprisoned for 18 months, to "forfeit and relinquish permanently [his] license to practice medicine in all jurisdictions…," and to pay a minimum restitution amount of $190,181.00. U.S. v. Hazem Garada, 1:03CR00571-001, March 1, 2004. (RX 200 pp. 248-256). As a result of the conviction, the Virginia Board suspended Applicant's medical license on August 12, 2004. (RX 201 p. 18).

17. Applicant was born in1963. (RX 200 at p.1). He graduated medical school in Kuwait in 1988 and completed his residency in internal medicine in the United States in 1994. (RX 200 at p. 3). He committed the offense detailed in paragraph 15, *supra*, between the ages of 37 and 40, beginning after almost sixteen (16) years of practice.

18. Applicant later filed with the District Court a motion asserting the plea agreement from his 2004 conviction had been violated. At the hearing on Applicant's motion, it was

determined the plea agreement had not been violated. The determining Judge advised Applicant that although the plea agreement was still in place and required him to relinquish all of his medical licenses, he could apply to a medical board for licensure and that board would determine his eligibility for said licensure. (PX 104 p. 85).

19. On February 24, 2017, Applicant applied for the reinstatement of his Virginia medical license, and the Virginia Board denied his application. (RX 201 pp. 4-7). Applicant appealed this denial, which was upheld.

20. On March 14, 2012, Applicant pleaded guilty to credit card fraud pursuant to the Virginia Code § 18.2-195 in Prince William County Circuit Court, and was sentenced to ninety (90) days jail. The sentence was suspended for a period of twenty-four (24) months conditioned upon Applicant's good behavior. (RX 204).

21. Applicant practiced medicine in the United Arab Emirates, Ministry of Health from 2008 to 2009. (RX 203 p. 61).

22. Applicant has not been licensed to practice medicine in the United States since 2004. (RX 200 pp. 248-255).

23. In April 2017, the Center for Personalized Education for Physicians Assessment (CPEP) determined Applicant held a "generally acceptable fund of knowledge of internal medicine with scattered deficiencies and areas in which his knowledge was out of date." Applicant had weaknesses "in the areas of cardiology, endocrinology, and health maintenance" and, due to his many years away from US medical practice, he required supervision upon returning to outpatient practice. (RX 200 p. 65).

24. On April 13, 2017, Applicant passed the Federation of State Medical Boards' Special Purpose Examination (SPEX) with a score of 77. A passing score is 75. (RX 200 pp.

88-89). Applicant's lowest score on the test was in the area of "Health Maintenance/Systems/Legal & Ethical."

25. Applicant provided four letters of reference from people he worked with after his conviction. Each of the four letters was for the time period of September 2018 to Nov. 6 or 8 2018 when applicant was apparently working as a medical assistant in a dermatologist's office in Virginia. One of the letters was from the dermatologist, two from other medical assistants, and one from the office manager. (PX I).

26. Applicant provided evidence of his volunteer work with the D.C. Medical Reserve Corps (MRC) during the COVID pandemic. This evidence was one e-mail from the MRC providing directions about his volunteer shift at a COVID testing site on April 28, 2020. (PX F). Applicant provided no other evidence regarding his work with the MRC or current employment activities.

27. Applicant provided evidence that he was no longer excluded as a provider of services covered by Title VIII (Medicare) programs (PX G) and as a provider for the Federal Employment Health Benefit Program (FEHBP). (PX H).

28. Applicant provided evidence of his completion of a Center for Personalized Education for Physicians (CPEP) self-study program. (PX E and J). He also referred to working on a re-entry program "in 2018, 2019" with a Dr. Aggarawal in Virginia that ceased when he "stopped that program and I notified CPEP and Virginia Board of Medicine." (Tr. p. 152, lines 18 – 21[10])

29. Regarding the health care fraud which involved billing, Applicant testified that "I only read those two pages that says what code to send. . . " (Tr. p. 128, lines 4 – 5). "Yeah it's a

[10] The transcript references are to the hearing on October 26, 2022.

headache because patient doesn't sign in; you see a file that he come in. You send the wrong date, that's it, you're [sic] fraud, for a different date." (Tr. p. 130, lines 11-14). However in entering his plea, Applicant agreed with the statement of facts that he "unlawfully, knowingly, and intentionally executed, and attempted to execute, a scheme or artifice to defraud a health care benefit program and to obtain, by means of false or fraudulent pretenses, and representations, money or property owned by health care benefit programs in connections with the delivery of or payment of health care benefits, items and services . .. " (RX 208). Applicant also testified that if he got his license "I do not intend to go and do solo practice." (Tr. p. 129, lines 12 – 20). Applicant's testimony regarding his health care conviction is self-serving. Applicant affirmatively sought before the Board to excuse his false billing by asserting that "it's not like I'm billing people out of thin air that didn't exist or didn't come to the practice" (Tr. P. 47). While Applicant's certainty that he would never go back to private practice and assumedly never be responsible for billing is reassuring, it does not address the underlying carelessness, and intentional fraud that he exercised when he was last engaged in private practice. Applicant demonstrated he took no responsibility for his criminal actions over a period of almost three years.

30. The Board did not make any changes to its findings as a result of Applicant's objections based on not being allowed to present evidence that he stated was "under seal" by order of a federal judge, and made no changes based on the affidavit he submitted summarizing the evidence he believed was wrongly excluded at the October 26, 2022 (f) hearing. Applicant had a full opportunity to present evidence relevant to his application at the hearing before the ALJ and a second hearing before the Board for the specific consideration of the (f) factors. Accepting for the sake of argument that Applicant assisted with federal investigations, the Board

appreciates his efforts in support of the federal government. However, they do not address the Applicant's belief that his three-year duration of medical fraud was simply due to a "mistake."

Conclusions of Law

The Board accepts the Conclusions of Law of the ALJ with minor corrections as listed below.

1. Applicant's license was suspended or revoked in revoked in three states and the circumstances of those actions constitute grounds for a similar result in the District of Columbia pursuant to D.C. Code § 3-1205.14(c).

A. Applicant's West Virginia medical license was suspended for "inappropriate, insensitive, unprofessional, unethical, and dishonorable conduct" with female patients. The basis for this suspension would have caused a similar result in the District, which also prohibits inappropriate behavior of a sexual nature in a patient-physician relationship. D.C. Official Code § 3-1205.14(a)(23).

B. Applicant's Ohio medical license was indefinitely suspended, with a stay of permanent revocation, for failure to disclose the Kentucky investigation on his license application, failure to disclose the West Virginia disciplinary investigation during the application process, and the suspension and limitation placed on his practice by the West Virginia disciplinary action. The basis for this suspension would have caused a similar result in the District, which also prohibits fraudulently or deceptively obtaining or attempting to obtain a license (D.C. Official Code § 3-1205.14(a)(1)), making false statements (D.C. Official Code § 22-2405 and D.C. Official Code §3-1205.14(a) (25)), and taking reciprocal action for conduct that would be grounds for discipline in the District (D.C. Official Code § 3-1205.14(a)(3) and (23)(A)).

C. On May 27, 2004, Applicant surrendered his Ohio Medical license for revocation in lieu of formal disciplinary proceedings, subsequent to a felony health care fraud conviction. Applicant's Ohio license was permanently revoked on May 27, 2004. The basis for this revocation would have caused a similar result in the District, which allows discipline for a conviction of an offense that is related to the occupation for which the license is held (D.C. Official Code § 3-1205.14(a)(4)).

D. Applicant's Virginia medical license was suspended after Virginia was informed that Applicant's Ohio medical license was suspended by the State Medical Board of Ohio. The basis for this suspension would have caused a similar result in the District, which allows reciprocal action for conduct that would be grounds for discipline in the District (D.C. Official Code § 3-1205.14(a)(3) and (23)(A)).

E. Applicant's Virginia license was reinstated with a reprimand and probationary requirements, with the reprimand imposed for providing two fraudulent responses on his original license application. The basis for this action would have caused a similar result in the District, which also prohibits fraudulently or deceptively obtaining or attempting to obtain a license (D.C. Official Code § 3-1205.14(a)(1)) and making false statements (D.C. Official Code § 22-2405 and D.C. Official Code §3-1205.14(a)(25)).

F. Applicant's license was reprimanded again by Virginia for making false statements during an investigation and for false statements on his Practitioner Profile. The basis for this action would have caused a similar result in the District, which requires updates to the Physician's Profile, 17 DCMR 4609.1.

G. Applicant's Virginia medical license was suspended after he pleaded guilty to felony health care fraud. The ALJ made a finding that his Virginia license was revoked,

which Applicant objects to. The Board agrees that his Virginia license was suspended, not revoked. The basis for this action would have caused a similar result in the District, which allows discipline for a conviction of an offense that related to the occupation for which the license is held (D.C. Code § 3-1205.14(a)(4)).

2. The Government has not established that Applicant is professionally incompetent pursuant to D.C. Code § 3-1205.14(a)(5). Applicant passed the SPEX exam with a score of 75 and his CPEP assessment found that while he needed additional training and education, it also found his knowledge to be "generally acceptable" but "out of date." (RX 200 p.65).

3. Applicant pleaded guilty to felony health care fraud. Applicant thereby admitted that he violated a D.C. or federal law, regulation or rule related to the practice of health. (D.C. Code § 3-1205.14(a)(25)).

4. Applicant pleaded guilty to felony health care fraud. Applicant thereby admitted that he committed fraud or made false claims related to Medicaid, Medicare of insurance pursuant to D.C. Code § 3-1205.14(a)(45).

5. For each factor set out in D.C. Code § 3-1205.14(f), regarding the Applicant's June 4, 2004 conviction for health care fraud:

A. The offense is "related" to the occupation for which the license is sought, by considering the duties and responsibilities of the health occupation. D.C. Code § 3-1205.14(f)(1). As noted above, Applicant "routinely submitted the HCFA-1500 claims form, which reflected that it was a comprehensive office visit, knowing that he did not see the patient on the date the claim for services were rendered or only having provided a prescription refill on that date." Accurately billing insurance providers is a critical and routine part of medical practice. It is also essential to providing an appropriate standard

of care. A physician is responsible for ensuring their competence in whatever they are doing, and keeping accurate records of what they do. This is fundamentally basic and absolutely critical for any physician providing patient care. A medical provider who bills fraudulently harms patients, violates professional standards, and undermines our healthcare system. This makes Applicant's conviction both "related" to "the duties and responsibilities of the health occupation," D.C. Code § 3-1205.14(f)(1), and lends significant gravity to the "nature and seriousness of the offense." D.C. Code § 3-1205.14(f)(2). Here, the seriousness of the offense is also captured by the significant penalties (18 months' incarceration) and restitution ($190,981.43) involved.

B. Applicant's period during which he offended ended almost twenty years ago. D.C. Code § 3-1205.14(f)(3). Ordinarily, the passing of two decades would be neutral or benefit the Applicant. Here, however, the weight of this factor is diminished by Applicant's failure to accept responsibility for his offenses even so many years later. Additionally, his subsequent conviction in 2012 for additional fraudulent activity (credit card fraud) shows that Applicant has "recidivated." D.C. Code § 3-1205.14(f)(5)(A). The Board, which considers this conviction solely for the limited purpose of weighing this statutory subfactor, is particularly troubled that Applicant not only again engaged in fraudulent conduct, but also again denied responsibility for conduct to which he had pleaded guilty ("So it's not like I'm stealing somebody's money.") (Tr. p. 49). The Board acknowledges Applicant's assertions that, at the time, he was operating as a member of a sting operation, and because the hearing was public, "these people cannot be here to tell you." (Tr. P. 50). Even assuming that such an operation existed, the details of

that operation are beside the point for the limited purpose of weighing conduct to which Applicant has pleaded guilty and again declines to assume responsibility for his actions.

C. Applicant was of an age and maturity at the time of his offense to recognize the gravamen of his actions. D.C. Code § 3-1205.14(f)(4). Applicant's offense occurred over almost three years, beginning when he was 37 and had been practicing as a licensed physician since 1994. This factor weighs heavily against Applicant, as his offense cannot be considered a "youthful mistake." Again, Applicant's claim of ignorance, that he only read "two pages" of the billing manual, is not exculpatory given his education, experience, and position of trust at the time the offense occurred.

D. Applicant has provided some evidence of his rehabilitation and fitness (D.C. Code § 3-1205.14(f)(5)) including:

1. Applicant has completed his probation and was reinstated for purposes of Medicare and the FEHBP programs, which weighs in favor of the Applicant. However, in considering Applicant's "rehabilitation and fitness," including "[a]ny evidence produced by the [A]pplicant," Applicant's compliance with the terms and conditions of his sentence do not outweigh Applicant's recidivism and his failure to take responsibility for conduct to which he has pleaded guilty. D.C. Code § 3-1205.14(f)(5).

2. Applicant provided limited information regarding his work experience, although the Board appreciates that he is limited in terms of medical practice without a medical license. Nonetheless, the letters of reference regarding his work as a medical assistant only cover a period of two months back in 2018. He

provided one email regarding one day of volunteer work with the MRC. No information was provided about recent employment.

3. Applicant provided significant information from the CPEP Self-study program that indicated he had finished the recommended continuing medical education (CME) courses. The Board also credits his very limited testimony about working with a preceptor, in "2018/2019" which was terminated early. Applicant provided no information about the type of work he was doing. This evidence somewhat favors the Applicant's application, (D.C. Code § 3 1205.14(f)(6)), but is limited in value by the fact that Applicant has not practiced medicine in the United States since 2004 and has provided no information about his current activities.

4. Applicant provided four letters of reference covering the period September 2018 to November 2018. D.C. Code § 3-1205.14(f)(7). While they are positive references, and thus favor the Applicant in that aspect, the Board does not assign them much weight, given the limited duration of time that they cover.

5. Applicant submitted an affidavit outlining his efforts with the federal government to assist in investigations of other individual's wrongdoing. While those efforts are laudable, they are of limited relevance particularly given his reluctance to evince responsibility for his earlier wrong-doing.

E. Altogether, after considering and weighing each of the statutory factors in D.C. Code § 3-1205.14(f), the Board exercises its discretion to conclude that Applicant's conviction is "related to the occupation for which the license . . . is sought" and Applicant has not provided sufficient evidence to overcome the criminal conviction.

5. The West Virginia Board found that Applicant engaged in "inappropriate, insensitive, unprofessional, unethical and dishonorable conduct" with female patients. This is conduct that a reasonable person would consider lewd or offensive, in violation of D. C. Code § 3-1205.14(a)(23)(c).

6. The Board may deny a license to an applicant whose license to practice a health occupation was revoked or suspended in another state if the basis of the license revocation or suspension would have caused a similar result in the District. D.C. Code § 3-1205.03(c). Through the course of Applicant's medical career in the United States, every medical license he was issued has been suspended or revoked at some time for serious professional and ethical lapses including:

1) Inappropriate sexual conduct with patients (D.C. Official Code § 3-1205.14(a)(23);

2) Failure to be truthful on license applications by not reporting investigations or disciplinary actions (D.C. Official Code § 3-1205.14(a)(1) and (25), and D.C. Official Code § 22-2405);

3) Making false statements during investigations (D.C. Official Code § 3-1205.14(a)(42)); and

4) Conviction for felony health care fraud (D.C. Code § 3-1205.14(a)(45)), which the Board has determined is "related" to the occupation for which Applicant is seeking a license. Any of those suspensions or revocations provides the Board an independent basis to deny Applicant a medical license.

8. The Board may also deny a license upon a determination that the Applicant has committed any of the violations of D.C. Code § 3-1205.14(a). The Board finds that Applicant has engaged in inappropriate behavior of a sexual nature in a patient-physician relationship (D.C.

Official Code § 3-1205.14(a)(23)); fraudulently or deceptively attempting to obtain a license (D.C. Official Code § 3-1205.14(a)(1), making false statements (D.C. Official Code § 22-2405 and D.C. Official Code §§3-1205.14(a) (25) and (42)); violated a D.C. or federal law, regulation or rule related to the practice of health (D.C. Code § 3-1205.14(a)(25); and committed fraud or made false claims related to Medicaid, Medicare of insurance pursuant to D.C. Code § 3-1205.14(a)(45). Each of these violations would provide the Board an independent basis to deny Applicant a license.

9. Applicant has not practiced medicine in the United States since 2004. Prior to and independent of the felony health care criminal conviction in 2004, three of the four jurisdictions in which Applicant was licensed had suspended his license for grounds apart from any criminal conviction, with one jurisdiction, Ohio, issuing a stated revocation. Following the first suspension and reprimand in 1998, Virginia subsequently reprimanded Applicant in 2003 for, among other things, providing false statements. The fourth jurisdiction had determined following an investigation that Applicant's medical care of a patient was "barely adequate." Applicant has not provided sufficient evidence to overcome this history of problematic behaviors in every jurisdiction that he has practiced medicine.,

9. Applicant has failed to establish that he has the appropriate skills, knowledge, judgment and character to practice medicine to the Board's satisfaction and should not be granted a license, pursuant to D.C. Code § 3-1205.03 and 17 DCMR § 4600.4.

Summary

The Board's mission is to protect the public. And "it is the Board's duty to protect the general public from unqualified physicians[.]" *Roberts v. District of Columbia Board of Medicine*, 577 A.2d 319, 327 (D.C.1990). Moreover, the "members of the Board of Medicine

are presumed to have substantially greater familiarity . . . with the meaning of terms like 'the practice of medicine.' *Joseph v. District of Columbia Board of Medicine*, 587 A.2d 1085, 1088 (D.C.1991). Therefore, the Board "is responsible for evaluating the qualifications and supervising the examinations of applications for licensure to practice medicine in the District." *Greenlee v. District of Columbia Board of Medicine*, 813 F. Supp. 48, 50-51 (D.D.C.1993). The practice of medicine is more than just technical knowledge; it involves putting the patient first through the exercise of both critical judgment and personal accountability. The Board's mission is to protect the public by ensuring only competent, qualified persons are licensed. Applicant's history of disciplinary actions against his medical licenses in numerous jurisdictions based on a variety of serious professional violations, in addition to Applicant's conviction for felony health care fraud, lead the Board to deny Applicant a medical license.

ORDER

UPON CONSIDERATION of the evidence and testimony presented at the hearings in the matter on November 8, 2017 and November 15, 2017 and October 26, 2022, and the entire record herein, it is this 31st day of October, 2023, **ORDERED** that the medical license application of Hazem Garada, M.D., shall be and is hereby **DENIED**.

DISTRICT OF COLUMBIA BOARD OF MEDICINE

10/31/2023
Date

By: Andrea Anderson, MD, FAAFP
Chairperson

Judicial Review of Final Actions by a Board

Pursuant to D.C. Official Code § 3-1205.20:
Any person aggrieved by a final decision of a board or the Mayor may appeal the decision to the District of Columbia Court of Appeals pursuant to D.C. Official Code § 2-510.

NOTE: Any appeal noted to the Court of Appeals must be filed within 30 days of the final decision of the Board. See D.C. Court of Appeals Rule 15(a).

D.C. Official Code, §2-510 provides:

(a) Any person suffering a legal wrong, or adversely affected or aggrieved, by an order or decision of the Mayor or an agency in a contested case, is entitled to a judicial review thereof in accordance with this subchapter upon filing in the District of Columbia Court of Appeals a written petition for review. If the jurisdiction of the Mayor or an agency is challenged at any time in any proceeding and the Mayor or the agency, as the case may be, takes jurisdiction, the person challenging jurisdiction shall be entitled to an immediate judicial review of that action, unless the Court shall otherwise hold. The reviewing Court may by rule prescribe the forms and contents of the petition and, subject to this subchapter, regulate generally all matters relating to proceedings on such appeals. A petition for review shall be filed in such Court within such time as such Court may by rule prescribe and a copy of such petition shall forthwith be served by mail by the clerk of the Court upon the Mayor or upon the agency, as the case may be. Within such time as may be fixed by rule of the Court, the Mayor or such agency shall certify and file in the Court the exclusive record for decision and any supplementary proceedings, and the clerk of the Court shall immediately notify the petitioner of the filing thereof. Upon the filing of a petition for review, the Court shall have jurisdiction of the proceeding, and shall have power to affirm, modify, or set aside the order or decision complained of, in whole or in part, and, if need be, to remand the case for further proceedings, as justice may require. Filing of a petition for review shall not in itself stay enforcement of the order or decision of the Mayor or the agency, as the case may be. The Mayor or the agency may grant, or the reviewing Court may order, a stay upon appropriate terms. The Court shall hear and determine all appeals upon the exclusive record for decision before the Mayor or the agency. The review of all administrative orders and decisions by the Court shall be limited to such issues of law or fact as are subject to review on appeal under applicable statutory law, other than this subchapter. In all other cases the review by the Court of administrative orders and decisions shall be in accordance with the rules of law which define the scope and limitations of review of administrative proceedings. Such rules shall include, but not be limited to, the power of the Court:

(1) So far as necessary to decision and where presented, to decide all relevant questions of law, to interpret constitutional and statutory provisions, and to determine the meaning or applicability of the terms of any action;

(2) To compel agency action unlawfully withheld or unreasonably delayed; and

(3) To hold unlawful and set aside any action or findings and conclusions found to be:

(A) Arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law;

(B) Contrary to constitutional right, power, privilege, or immunity;

(C) In excess of statutory jurisdiction, authority, or limitations or short of statutory jurisdiction, authority, or limitations or short of statutory rights;

(D) Without observance of procedure required by law, including any applicable procedure provided by this subchapter; or

(E) Unsupported by substantial evidence in the record of the proceedings before the Court.

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