

**GOVERNMENT OF THE DISTRICT OF COLUMBIA
BOARD OF MEDICINE**

IN RE: :
 :
JAMES A. DIGGS, M.D. :
 :
License No.: MD11757 :
 :
Respondent :

FINAL ORDER

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 HORA, at D.C. Official Code § 3-1202.03, authorizes the Board to regulate the practice of Medicine in the District of Columbia, and D.C. Official Code § 3-1205.19 authorizes the Board to conduct hearings and issue final decisions.

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 the HORA. D.C. Official Code, § 3-1201.03; *Mannan v. District of Columbia Board 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 its 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 the 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).

Background

On August 10, 2014, the Board issued a Notice of Intent to Take Disciplinary Action against Respondent's District of Columbia medical license (the "Notice"). The Notice charged Respondent as follows:

1. You filed with the Board of Medicine a statement which you knew or should have known was false or misleading in violation of D.C. Official Code § 3-1210.04 (2012 Repl.), for which the Board may take action under D.C. Official Code § 3-1205.14 (a)(24) (2012 Repl.);
2. You filed with the Board a statement that you knew or should have known was false or misleading in violation of D.C. Official Code § 3-1210.04, for which the Board can take the proposed action under D.C. Official Code § 3-1205.14(a)(24);
3. You violated a regulation issued pursuant to D.C. Official Code Chapter 12 of Title 3, in that you failed to show proof of meeting continuing education credit requirements under 17 DCMR § 4614.2, for which the Board may take action under D.C. Official Code § 3-1205.14(a)(24);
4. You have violated a negotiated settlement with the Board in violation of D.C. Official Code §3-1205.14(a)(27) (2012 Repl.);
5. You filed with the Board a statement that you knew or should have known was false or misleading in violation of D.C. Official Code § 3-1210.04 for which the Board can take the proposed action under D.C. Official Code § 3-1205.14(a)(24); and
6. You violated a regulation pursuant to D.C. Official Code Chapter 12 of Title, in that you failed to show proof of meeting continuing education credit requirements under 17 DCMR § 4614.2, for which the Board may take action under D.C. Official Code § 3-1205.14(a)(24).

Pursuant to Title 17 DCMR §4105.2(c), the Notice was served on August 22, 2014 by U.S. Postal Service certified mail, return receipt requested, to Respondent's business address on file. The U.S. Postal Service return receipt indicates that delivery of the Notice was accepted and signed for on August 22, 2014. The Notice stated that Respondent had a right to request a hearing in the matter within twenty (20) calendar days after service. Respondent did not request

a hearing within the allotted time period and, to date, has not requested a hearing. In accordance with 17 DCMR § 4103.1 the Board may, without a hearing, take the action contemplated in the notice.

Findings of Facts

Based upon the content of the Board's file in this matter, the Board hereby makes the following findings of fact:

1. At all times relevant, Respondent has held a license to practice medicine in the District of Columbia.
2. On or about November 8, 2012, Respondent submitted an on-line license renewal application to the Board of Medicine, in which he answered "No" to the question, "Have you ever been arrested, convicted, pled guilty to, or pled no contest to the violation of any federal, state, or other statute or ordinance constituting a felony or misdemeanor (including driving under the influence or while impaired, but excluding minor traffic violations)?"
3. A mandatory criminal background check on Respondent revealed that he was arrested: a) in 1986 for possession of cocaine and marijuana, for which Respondent was found guilty on the charge of possession of drug paraphernalia, a misdemeanor; b) in 1991 for failure to file income tax return and was sentenced to two (2) years' probation; and c) in 1995 for simple assault.
4. On or about November 18, 2010 Respondent submitted an on-line license renewal application to the Board of Medicine, in which he answered "Yes" to the statement "I have completed 50 hours of AMA or AOA-approved CME [(continuing medical education)] since January 1, 2009."

5. On December 6, 2011, Respondent was notified by the Board that he had been selected for the Board's continuing education audit for the January 1, 2009 through December 31, 2010 period, and that he was to provide proof of having completed the fifty (50) requisite hours of continuing education credit.
6. Respondent failed to submit to the Board proof of having completed the requisite fifty (50) continuing education hours, and instead submitted proof of forty (40) continuing education hours. Therefore, Respondent was deficient in his requisite continuing medical education hours by ten (10) hours.
7. Respondent entered into a Negotiated Settlement Agreement (NSA) with the Board on February 27, 2013, in order to resolve his failure to complete the ten (10) outstanding continuing education hours for the licensure period from January 1, 2009 through December 31, 2010 period.
8. The terms of the NSA required, *inter alia*, that Respondent complete the ten (10) hours of continuing education credit for which Respondent had been deficient within three (3) months of the effective date of the NSA.
9. Respondent failed to comply with the NSA.
10. On or about November 8, 2012, Respondent submitted an on-line license renewal application to the Board of Medicine, in which he again certified under penalty perjury that he had completed 50 hours of AMA or AOA-approved CME since January 1, 2011.
11. Based on the Respondent's failure of the continuing education audit for the January 1, 2009 through December 31, 2010 period, Respondent was again selected to be audited for the January 1, 2011 through December 31, 2012 period.

12. Respondent was audited by the Board for the licensure period from January 1, 2011 through December 31, 2012, and again failed to show proof of having completed *any* of the fifty (50) requisite continuing education hours for that period.

Conclusions of Law

Based upon the foregoing, and in consideration of the record, the Board concludes that disciplinary action may be taken against Respondent's license due to Respondent's violation of District statutes and regulations.

D.C. Official Code § 3-1205.14 (2001) provides in pertinent part:

- (a) Each board, subject to the right of a hearing as provided by this subchapter, on an affirmative vote of a majority of its members then serving, may take 1 or more of the disciplinary actions provided in subsection (c) of this section against any applicant, licensee, or person permitted by this subchapter to practice the health occupation regulated by the board in the District who: (24) Violates any provision of this chapter or rules and regulations issued pursuant to this chapter; and (27) Violates an order of the board or the Mayor, or violates a consent decree or negotiated settlement entered into with a board or the Mayor;
- (c) Upon determination by the board that an applicant, licensee, or person permitted by this subchapter to practice in the District has committed any of the acts described in subsection (a) of this section, the board may:
 - (1) Deny a license to any applicant;
 - (2) Revoke or suspend the license of any licensee;
 - (3) Revoke or suspend the privilege to practice in the District of any person permitted by this subchapter to practice in the District;
 - (4) Reprimand any licensee or person permitted by this subchapter to practice in the District;
 - (5) Impose a civil fine not to exceed \$5,000 for each violation by any applicant, licensee, or person permitted by this subchapter to practice in the District;

- (6) Require a course of remediation, approved by the board, which may include:
 - (A) Therapy or treatment;
 - (B) Retraining; and
 - (C) Reexamination, in the discretion of an in the manner prescribed by the board, after the completion of the course of remediation;
- (7) Require a period of probation; or
- (8) Issue a cease and desist order pursuant to § 3-1205.16.

D.C. Official Code § 3-1210.04 provides

- (a) No person shall file or attempt to file with any board or the Mayor any statement, diploma, certificate, credential, or other evidence if the person knows, or should know, that it is false or misleading.
- (b) No person shall knowingly make a false statement that is in fact material under oath or affirmation administered by any board or hearing officer.

Finally, Title 17 District of Columbia Municipal Regulations § 4614.2 provides:

Physicians actively practicing medicine in the District of Columbia shall submit proof of having completed fifty (50) American Medical Association Physician Recognition Award (AMA/PRA) Category I hours of Board of Medicine approved continuing education credit during the two-year period preceding the date the license expires.

Charge 1

Respondent is charged with having filed a statement which he knew or should have known was false or misleading, in violation of D.C. Official Code §3-1210.04. Section 3-1210.04 prohibits a person from filing with the Board any statement that is false or misleading.

On or about November 8, 2012, Respondent applied to renew his District of Columbia medical license. A required criminal background check on Respondent revealed that Respondent was arrested in 1986 for possession of cocaine and marijuana, for which Respondent was found guilty on the charge of possession of drug paraphernalia, a misdemeanor. The criminal

background check also found that Respondent was arrested in 1991 for failure to file income tax return for which he was sentenced to two (2) years' probation, and arrested again in 1995 for simple assault. Despite these arrests, Respondent answered "No" on the application when asked "Have you ever been arrested, convicted, pled guilty to, or pled no contest to the violation of any federal, state, or other statute or ordinance constituting a felony or misdemeanor (including driving under the influence or while impaired, but excluding minor traffic violations)?"

Respondent's answer in the negative to the renewal application's screening question was false, and Respondent knew or should have known that the response he provided was misleading. The Board, therefore, has a basis in fact and law to conclude that Respondent filed with the Board a statement he knew to be false or misleading in violation of D.C. Official Code §3-1210.04, for which disciplinary action may be taken pursuant to D.C. Official Code §§ 3-1205.14(a)(24), and (c).

Charge 2

Respondent is charged with a second count of filing with the Board a statement that he knew or should have known was false or misleading, in violation of D.C. Official Code §3-1210.04. The HORA at § 3-1210.04 prohibits a person from filing with the Board any statement that is false or misleading.

On or about November 18, 2010, Respondent applied to renew his District of Columbia medical license. On the renewal application, Respondent certified under penalty of perjury that he had completed 50 hours of AMA or AOA-approved CME since January 1, 2009. Respondent was thereafter randomly selected as part of the Board's continuing education audit to verify that he had in fact completed the requisite fifty (50) hours of continuing medical education hours. When the Board requested Respondent to submit proof of having completed the fifty (50) hours

that Respondent had attested to completing in his license renewal application, Respondent submitted proof of having completed only forty (40) of the hours.

Respondent knowingly attested to having completed all fifty (50) continuing education hours when he, in fact, had not completed them. Respondent's statement indicating that he had complied with the continuing education requirements was false and can only be interpreted have been made with the intention of misleading the Board. The Board, therefore, has a basis in fact and law to conclude that Respondent filed with the Board a statement he knew to be false or misleading in violation of D.C. Official Code §3-1210.04, for which disciplinary action may be taken pursuant to D.C. Official Code §§ 3-1205.14(a)(24), and (c).

Charge 3

The facts discussed in Charge 2, *supra*, are incorporated herein. Respondent is charged with violating D.C. Official Code §3-1205.14(a)(24) – violating a regulation issued pursuant to the authority of the HORA – in that he failed to show proof of meeting continuing education credit requirements under title 17 DCMR § 4614.2. 17 DCMR § 4614.2 requires that physicians actively practicing medicine in the District of Columbia submit proof of having completed fifty (50) hours of Board of Medicine-approved continuing education credit during the two-year period preceding the date the license expires.

By letter dated December 6, 2012, the Board notified Respondent that he had been selected to submit proof of having completed fifty (50) hours of continuing education as part of the Board's continuing education audit. Respondent, however, failed to show proof of having completed all fifty (50) of the requisite continuing education hours, per 17 DCMR §4614.2. The Board, therefore, has a basis in fact and law to conclude that Respondent is in violation of D.C.

Official Code §3-1205.14(a)(24), for which disciplinary action may be taken pursuant to D.C. Official Code §3-1205.14(c).

Charge 4

The facts discussed in Charge 2 and 3, *supra*, are incorporated herein. Respondent is charged with violating D.C. Official Code §3-1205.14(a)(27). Section 3-1205.14(a)(27) authorizes the Board to sanction an individual for violating a negotiated settlement agreement entered into with the Board.

Respondent entered into an NSA with the Board on February 27, 2013 in order to resolve his failure to complete the fifty (50) requisite hours of his continuing education requirement for the January 1, 2009 through December 31, 2010 period. Respondent subsequently failed to submit to the Board proof of having completed the ten (10) hours of continuing education credit left outstanding, as required by the NSA. Thus, the Board has a basis in fact and law to conclude that Respondent violated his NSA in violation of D.C. Official Code §3-1205.14(a)(27), for which disciplinary action may be taken pursuant to D.C. Official Code §3-1205.14(c).

Charge 5

Respondent is charged with another count of having filed a statement which he knew or should have known was false or misleading, in violation of D.C. Official Code §3-1210.04. Section 3-1210.04 prohibits a person from filing with the Board any statement that is false or misleading.

On or about November 8, 2012, Respondent applied to renew his District of Columbia medical license. On the renewal application, Respondent certified under penalty of perjury that he had completed 50 hours of AMA or AOA-approved CME since January 1, 2011. Respondent

was thereafter selected as part of the Board's continuing education audit to verify that he had, in fact, completed the requisite fifty (50) hours of continuing medical education hours. When requested by the Board to submit proof of having completed the fifty (50) hours that Respondent had attested to completing in his license renewal application, Respondent failed to submit proof of having completed *any* of the requisite hours.

Respondent attested to having completed all fifty (50) continuing education hours when he, in fact, had not completed them. Respondent's statement certifying that he had complied with the continuing education requirements was false and was misleading. The Board, therefore, has a basis in fact and law to conclude that Respondent filed with the Board a statement he knew to be false or misleading in violation of D.C. Official Code §3-1210.04, for which disciplinary action may be taken pursuant to D.C. Official Code §§ 3-1205.14(a)(24), and (c).

Charge 6

The facts discussed in Charge 5, *supra*, are incorporated herein. Respondent is charged with violating D.C. Official Code §3-1205.14(a)(24) – violating a regulation issued pursuant to D.C. Official Code Chapter 12 of Title 3 – in that he failed to show proof of meeting continuing education credit requirements under title 17 DCMR § 4614.2. Title 17 DCMR § 4614.2 requires that physicians actively practicing medicine in the District of Columbia shall submit proof of having completed fifty (50) hours of Board of Medicine-approved continuing education credit during the two-year period preceding the date the license expires.

Respondent was selected as part of the Board's continuing education audit for the January 1, 2011 through December 31, 2012 licensure period. Respondent failed to show proof of having completed the fifty (50) requisite hours of continuing education hours, as required under 17 DCMR §4614.2. The Board, therefore, has a basis in fact and law to conclude that

Respondent is in violation of D.C. Official Code §3-1205.14(a)(24), for which disciplinary action may be taken pursuant to D.C. Official Code §3-1205.14(c).

Based upon the aforementioned facts, the Board concludes that Respondent has violated the HORA and is subject to disciplinary action, thereunder. As such, the Board now issues the following Order.

ORDER

Based upon the foregoing, it is by the District of Columbia Board of Medicine hereby, **ORDERED** that Respondent's medical license, License No. MD11757, shall be **INDEFINITELY SUSPENDED** until Respondent complies with all of the terms of this Final Order; and it is further

ORDERED, that, within sixty (60) days of the effective date of this Order, Respondent shall submit verified proof of completing ALL deficient continuing medical education hours to date, to wit: 10 continuing medical education hours for the 2010 renewal cycle, 32.50 continuing medical education hours for the 2012 renewal cycle, and 3.50 continuing medical education hours for the 2014 renewal cycle, totaling 46 continuing medical education hours; and it is further

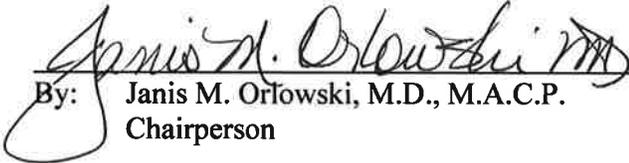
ORDERED, that Respondent shall not be permitted to use any continuing education credits submitted to the Board in satisfaction of this Order toward the completion of the Board's continuing medical education requirement for the current license renewal period or any renewal period thereafter; and it is further

ORDERED, that within forty-five (45) days from the date of this Order, Respondent shall pay a fine in the amount of Five Thousand One Hundred Dollars (\$5,100.00) which shall be paid by certified check or money order made payable to "D.C. Treasurer" and shall be submitted to

Lisa Robinson, Licensing Specialist, Board of Medicine, 899 North Capitol Street, NE, 2nd Floor,
Washington, DC 20002.

ORDERED, that Respondent shall comply with all laws, regulations and orders of the Board
of Medicine and the District of Columbia.

DISTRICT OF COLUMBIA BOARD OF MEDICINE

 3.25.15
By: Janis M. Orłowski, M.D., M.A.C.P.
Chairperson

Review of a Final Decision

District of Columbia Municipal Regulations, § 17-4122.1 provides:

A party aggrieved by a decision of a board issued after a hearing may seek review of the decision by the District of Columbia Court of Appeals in accordance with the District of Columbia Administrative Procedure Act, D.C. Code §§ [2-501 *et seq.*].

NOTE: *Any appeal noted to the Court of Appeals must be filed within 30 days of the final decision of the Board.*

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.

This Order is the Final Order of the Board in this disciplinary matter and constitutes a public record. This Final Order shall be published on the Department of Health's website and Board newsletter, and reported to the National Practitioner Data Bank and the Healthcare Integrity Protection Data Bank.

Copies to:

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Civil Enforcement Section
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And

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Respondent

