

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

IN RE: :
 :
ISHTIAQ MALIK, M.D. :
 :
License No.: MD33449 :
 :
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, *et seq.* (2009). The HORA authorizes the Board to regulate the practice of Medicine in the District of Columbia and to conduct hearings and issue final decisions. *See* D.C. Official Code §§ 3-1202.03, 3-1205.19.

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 § 3-1205.14; *Mannan v. D.C. 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. D.C. Board of Medicine*, 562 A.2d 109, 113 (D.C. 1989). The HORA “was designed to ‘address modern advances and community needs *with the paramount consideration of protecting the public interest.*’” *Joseph v. D.C. 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 (Nov. 26, 1985)) (emphasis added by court).

Background

On January 9, 2014, the Board and Respondent entered into a consent order (the “D.C. Order”) that suspended Respondent’s District of Columbia license to practice medicine for a period of one year, but immediately stayed the suspension pending successful compliance with all terms and conditions of probation, as agreed upon in the D.C. Order. The terms of the D.C. Order are binding on Respondent and the Board. 17 DCMR 4108.5.

The D.C. Order concluded as a matter of law that the Board was authorized to take disciplinary action against Respondent’s license based on findings that Respondent violated D.C. Official Code § 3-1205.14 when he:

- (3) Was disciplined by a licensing or disciplinary authority or peer review body of any jurisdiction for conduct that would be grounds for disciplinary action under D.C. Official Code § 3-1205.14;
- (8) Willfully made or filed a false report of a record in the practice of a health occupation;
- (12) Willfully practiced a health occupation with an unauthorized person or aided an unauthorized person in the practice of a health occupation;
- (13) Submitted false statements to collect fees for which services were not provided or submitted statements to collect fees for services that were not medically necessary;
- (24) Violated a regulation issued pursuant to the HORA when Respondent failed to report the final order of any regulatory board of another jurisdiction that resulted in denial, probation, revocation, suspension, or restriction of his license, in violation of 17 DCMR 4609.1 (m);
- (26) Failed to conform to standards of acceptable conduct and prevailing practice within a health profession; and
- (45) Committed fraud or made false claims in connection with the practice of an occupation regulated by the HORA, or relating to Medicaid, Medicare, or insurance.

Respondent agreed that if he failed to satisfactorily fulfill the terms of the D.C. Order, including any term the Board may reasonably impose, the Board may take disciplinary action against Respondent's license without further hearing, without the issuance of a notice of intent to take disciplinary action, and without right to appeal.

Findings of Fact

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

1. Respondent has held a license to practice medicine in the District of Columbia from February 27, 2002 until December 31, 2015, when Respondent's license expired.
2. As of January 9, 2014, Respondent was the president of Union Multicare Medical Center, Inc. ("UMMC"), located in the District of Columbia.
3. While engaged in the practice of medicine at UMMC, Respondent employed Nathan Thomas from 2009 until 2011, as a purported physician assistant.
4. During the course of Mr. Thomas' employment, Respondent permitted Mr. Thomas to practice as a physician assistant when Mr. Thomas was not licensed to practice as a physician assistant. Indeed, the District of Columbia successfully prosecuted Mr. Thomas for practicing without a license in *District of Columbia v. Thomas*, Case No. 2012-DOH-F100384 (Dec. 5, 2012).
5. On or about October 23, 2012, the Maryland Board of Physicians (the "Maryland Board") issued a consent order (the "Maryland Order"), disciplining Respondent for unprofessional conduct in the practice of medicine because: a) Respondent did not properly document service or did not perform services for which Respondent submitted bills for insurance reimbursement; b) Respondent willfully made or filed a false report or

record in the practice of medicine; and c) Respondent submitted false statements to collect fees for which services were not provided or submitted statements to collect fees for services that were not medically necessary. The Maryland Order required, among other terms, that:

i. Within two months of November 14, 2012, Respondent shall undergo an audit, assessment, and evaluation of his operations, coding, billing, and documentation to support the billing, by a Maryland Board-approved expert in coding and medical billing (the “Operational Assessment”);

ii. Respondent shall ensure that the expert submits the Operational Assessment to the Maryland Board; and that

iii. Within six months after the Operational Assessment is completed, Respondent’s practice shall be subject to re-review by the Maryland Board-approved expert in coding and medical billing. Respondent shall ensure that the expert submits the Operational Re-Assessment to the Maryland Board.

6. Respondent did not report the disciplinary action taken by the Maryland Board, and the Board did not become aware of the Maryland Order until it received independent notification.

7. On or about July 20, 2013, the United States District Court for the District of Columbia entered an order granting summary judgment in favor of the District of Columbia in the amount of \$771,271.01, and against Respondent. *United States v. Malik*, Civil No. 12-1234 (RLW) (D.D.C. July 30, 2013). In that case, the District Government alleged that Respondent, individually and through corporate entities, knowingly presented and caused to be presented, false or fraudulent claims to the District’s Medicaid

Program for payment or approval by: a) billing for services that were not provided; b) using billing codes that were inapplicable to services actually provided; c) billing separately for services that were already included in the payment for other services and billing codes; and d) double billing for services that should have been billed only once.

8. On or about September 23, 2013, the Board issued an Amended Notice of Intent to take Disciplinary Action against Respondent in consideration of the facts, including relevant findings of fact in the Maryland Order.

9. Respondent, through his attorney, agreed to enter into the D.C. Order; the order became effective on January 9, 2014 after both parties had signed the order. Pursuant to D.C. Order, the Board ordered as follows:

- i. that Respondent's license to practice medicine is suspended for a period of one year, to be immediately stayed pending the successful completion of all the terms and conditions of probation as stated therein;
- ii. that, beginning on January 9, 2014, Respondent shall be immediately placed on probation for a period of five years, giving credit for the probationary time already served under the Maryland Order, which began November 14, 2012, during which time Respondent shall comply with and successfully complete each probationary term imposed by the Maryland Board in the Maryland Order;
- iii. that Respondent shall complete, within six months of the effective date of the D.C. Order, a total of 48 hours of continuing medical education ("CME"), allocated into 24 hours of CME in ethics and billing, and 24 hours of CME in supervising mid-level practitioners;

iv. that the CME to be completed therein shall be in addition to the CME requirements under the HORA to renew and maintain Respondent's license in good standing;

v. that Respondent shall submit a Corrective Action Plan, along with the Maryland Operational Assessment and Maryland Operational Re-Assessment (collectively the "Maryland Report"), that evidences billing compliance, billing monitoring, and auditing of billing practices;

vi. that Respondent shall comply with any other term the Board may reasonably impose under the D.C. Order, and shall bear all costs associated with fulfilling the terms of the D.C. Order;

vii. that Respondent shall practice medicine in accordance with the HORA and all other applicable laws and regulations of the District of Columbia;

viii. that, upon the successful completion of Respondent's probation as set forth herein, and on the five-year anniversary of the imposition of probation, Respondent may petition the Board to terminate the probation, conditioned upon Respondent's successful compliance with the D.C. and Maryland Orders;

ix. that, if Respondent fails to satisfactorily fulfill the terms of the D.C. Order, the Board may take disciplinary action against Respondent's license without further hearing; and it is further

x. that the D.C. Order shall be a public document.

10. Pursuant to the D.C. Order, the Respondent consented, as affirmed by Respondent's initial and signature, counsel's signature, and signature of the Notary Public, that Respondent made several acknowledgements, including the following:

i. Respondent expressly acknowledged that, by signing the D.C. Order, Respondent waived his right to appeal the D.C. Order, as well as any and all rights Respondent would have to challenge or appeal the Board's decision to suspend Respondent's license based on the failure to satisfactorily fulfill the terms of the D.C. Order;

ii. Respondent expressly acknowledged that, by signing the D.C. Order, Respondent waived his right to require the D.C. Board to charge Respondent through a notice of intent to take disciplinary action with a violation of the D.C. Order and to require the government to prove such violation by a preponderance of the evidence before suspending Respondent's license based upon the failure to satisfactorily fulfill the terms of the D.C. Order;

iii. Respondent acknowledged that, in the event that the Board suspends Respondent's license based on a failure to satisfactorily fulfill the terms of the D.C. Order, Respondent's sole remedy and recourse would be to respond within the time period set forth in the D.C. Order with proof of his compliance and that if Respondent fails to do so, then Respondent's sole remedy and recourse would be to comply with the terms and conditions of the D.C. Order to the satisfaction of the Board; and that

iv. Respondent had an opportunity to review the D.C. Order, to consult with counsel, chose willingly to sign the D.C. Order, and understood the meaning and effect of the D.C. Order.

11. On or about July 2, 2014, Respondent sent a letter to the Board asserting that he had completed the conditions of probation (the "Termination Request"), which the Board

treated as a request to terminate the D.C. Order. In the Termination Request, Respondent stated that he had “supervised mid-level practitioner [sic] for 24 hours as required by consent orders.” Further, Respondent asserted that he had completed the 48 hours of CME, as required by the D.C. Order, and that the relevant CME certificates were attached. According to the CME certificates, Respondent had completed 17 hours of CME of the 24 required hours of CME in ethics and billing but did not complete any CME in supervising mid-level practitioners. These certificates are dated June 22, 2014 (one certificate representing three hours of completed CME), June 23, 2014 (eight certificates representing a total of seven hours of completed CME), and June 25, 2014 (eight certificates representing a total of seven hours of completed CME).

12. On or about August 21, 2014, the Board, through its staff contacted Respondent and informed him that all requirements of the D.C. Order must be fulfilled before requesting termination of the D.C. Order.

13. On December 30, 2014, the Board sent Respondent a notice reasserting that he must comply with the D.C. Order. Respondent replied to the notice on December 31, 2014, stating that he would submit proof of his compliance on or about January 3, 2015.

14. On January 5, 2015, Respondent asserted that he had completed 24 hours of CME in ethics and billing and conceded that he had not completed any hours of CME in supervising mid-level practitioners.

15. On January 5, 2014, Respondent submitted the Maryland Report to the Board, which included the Operational Assessment, the Operational Re-Assessment, and Version 2.0 of the Ethics and Compliance Plan and Program. The Operational Assessment was sent to the Maryland Board on or about July 1, 2013. The Operational

Re-Assessment was sent to the Maryland Board on or about January 25, 2014. Version 2.0 of the Ethics and Compliance Plan and Program was completed on or about November 1, 2014.

16. On or about January 28, 2015, the Board considered Respondent's deficiencies and voted to require Respondent to comply with the D.C. Order, including compliance with the requirement that Respondent complete 24 hours of CME in the supervision of mid-level practitioners.

17. On or about January 29, 2015, Respondent reported additional CME credits to the Board, including a letter, dated July 22, 2013, verifying eight hours of completed CME in professional responsibility and ethics. However, none of the newly reported CME credits related to supervising mid-level practitioners.

18. On or about March 9, 2015, the Board sent Respondent an order of compliance via certified mail. According to records of the Board and the United States Postal Service, Respondent had moved without leaving a forwarding address or informing the Board in a change of address; the letter was returned to the Board on March 23, 2015. Although Respondent had vocalized an intent to leave the country during a meeting with the Executive Director of the Board on January 26, 2015, Respondent has not informed the Board, orally or in writing, of any change of address of place of residence or place of business or employment as of the date of this order. The letter ordered Respondent to send documentation of completed CME credits in supervision of mid-level health practitioners and an updated assessment report from Respondent's Maryland monitor no later than March 20, 2015. As of the date of the issuance of this Final Order, Respondent has not complied, in whole or in part, with the March 9, 2014 order of compliance.

Conclusions of Law

Based upon the foregoing, and in consideration of the record, the Board hereby makes the following conclusions of law:

1. Respondent failed to reasonably comply with the D.C. Order when he did not complete 48 hours of CME within six months of January 9, 2014.
2. Respondent failed to reasonably comply with the D.C. Order when he did not submit to the Board proof of 48 hours of completed CME credit by March 3, 2015, a term that was reasonably imposed by the Board in the March 9, 2015 order of compliance.
3. Respondent failed to reasonably comply with the D.C. Order when he failed to submit the Maryland Report to the Board by a reasonable date. The Maryland Report was submitted to the Board on January 5, 2014 after Respondent had twice been notified that he had not complied with the D.C. Order. The delay was further unreasonable because the Operational Assessment and Operational Re-Assessment had been submitted to the Maryland Board on or about July 1, 2013 and January 25, 2014 respectively, and version 2.0 of the of the Ethics and Compliance Plan and Program having been completed on or about November 1, 2014.
4. Respondent failed to reasonably comply with the D.C. Order when he did not submit to the Board an updated assessment report from Respondent's Maryland monitor, a term that was reasonably imposed by the Board in the March 9, 2015 order of compliance, especially in consideration of Respondent's history of noncompliance.
5. Respondent failed to reasonably comply with the D.C. Order when he submitted a Termination Request on or about July 2, 2014 while not in compliance with the D.C. Order. This request was improper and in violation of the D.C. Order, as Respondent

agreed that he may petition for termination of the D.C. Order only after he has successfully completed the probationary period of five years and only if Respondent has successfully complied with the D.C. and Maryland Orders.

6. Respondent failed to reasonably comply with the D.C. Order when he did not practice medicine in accordance with the HORA by violating D.C. Official Code § 3-1210.04 (a). Respondent's Termination Request falsely stated that Respondent had completed the 48 hours of CME required by the D.C. Order when Respondent had in fact completed only 17 hours of relevant CME. This constitutes a false or misleading statement filed with the Board in violation of D.C. Official Code § 3-1210.04 (a). Further, Respondent stated that he supervised a mid-level practitioner for 24 hours with the intent of falsely suggesting that Respondent had completed 24 hours of CME relating to the supervision of mid-level practitioners, as required in the D.C. Order. This constitutes a false or misleading statement filed with the Board in violation of D.C. Official Code § 3-1210.04 (a).

7. Respondent failed to reasonably comply with the D.C. Order when he did not practice medicine in accordance with the HORA by failing to notify the Board in writing of any change in address of place of residence or place of business or employment within 30 days after the change of address in violation of D.C. Official Code § 3-1205.13 (3)(a).

8. In short, Respondent's failure to comply with the D.C. Order amount to a violation of D.C. Official Code § 3-125.14(a)(27) ("Violates an order of the board . . . , or violates a consent decree[.]").

In consideration of the foregoing findings of fact and conclusions of law, the Board hereby concludes that Respondent has not satisfactorily complied with the terms of the D.C. Order. In the D.C. Order, the Board suspended Respondent's license to practice medicine for one year and immediately stayed that suspension, "pending successful completion of all terms and conditions of probation" as stated in the D.C. Order. Based on the Board's finding of noncompliance, the Board now concludes that it is proper to lift the stay of suspension, and to impose the suspension of Respondent's District of Columbia license to practice medicine for a period of one year effective immediately.

By entering into the D.C. Order, Respondent waived his rights to appeal or for reconsideration under the HORA and Title 17 DCMR Chapter 41. 17 DCMR 4108.7. Further, Respondent expressly waived his rights to notice, hearing, appeal, and reconsideration of the Board's finding of noncompliance and subsequent action to lift the stay of suspension. Indeed, at the November 14, 2013, hearing, as reflected on pages 12-13 of the transcript of the proceedings, the following colloquy transpired:

Q [By Respondent]: Can you explain that, what would, in case a violation occurs, what I am entering into, then it will go in effect immediately, right?

A [By Board Counsel]: [I]f you do not comply with any single term, that would be considered a violation, in which case, upon the violation, without any hearing, the Board can immediately impose the suspension.").

In that proceeding, Board Counsel took pains to ask Respondent whether he knew what he was doing, whether he understood what he was doing, and whether he was consenting to the terms of the Consent Order willingly, knowingly and voluntarily. *See* Transcript at 6-11. Moreover, Respondent's counsel stated during that proceeding, "I believe the questions and the responses to

the questions evidenced [Respondent]’s free and voluntary participation in this agreement, post agreement, let me say it that way.” Transcript at 11.

Respondent’s waivers of certain procedural rights are proper and enforceable. *See In re Day*, 717 A.2d 883, 887 (D.C. 1998) (“[I]t is well established that an individual can waive any process to which he or she has a right.” (citing *D.H. Overmyer Co. v. Frick Co.*, 405 U.S. 174, 185 (1972)); *District of Columbia v. Jerry M.*, 571 A.2d 178, 184–85 (D.C. 1990) (holding that a party to a consent decree who waives his right to appeal may appeal any order issued pursuant to the decree only to the extent that the order is outside the scope of the consent decree); *see also In re Bielec*, 755 A.2d 1018, 1023 (D.C. 2000); *In Re Richardson*, 692 A.2d 427 (D.C. 1997).¹

[CONTINUED ON NEXT PAGE]

¹ *See also D.C. Department of Health v. Fortenberry*, Case No. DH-B-05-800021 (Mar. 12, 2007) (“It is well established that an individual can waive any process to which he or she has a right.”).

ORDER

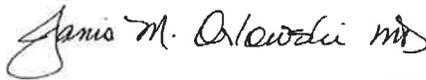
Based upon the foregoing, it is by the District of Columbia Board of Medicine hereby:

ORDERED, that the stay of suspension as directed in the January 9, 2014 Consent Order is VACATED; and it is further

ORDERED, that Respondent's license to practice medicine (license number MD33449) shall, and is hereby SUSPENDED for a period of ONE YEAR effectively immediately upon signing this Final Order; and it further

ORDERED, that this Final Order shall be a public document.

DISTRICT OF COLUMBIA BOARD OF MEDICINE



August 12, 2015

Date

By: Janis M. Orlowski, 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. Official 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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