

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

In Re: :
 :
OPARAUGO UDEBIUWA, M.D. :
 :
Applicant :

FINAL DECISION AND ORDER

This matter comes before the District of Columbia Board of Medicine (the Board) on the reinstatement application of Oparaugo Udebiuwa, M.D., Applicant herein. For the reasons stated below, the Board denies the application for reinstatement.

The Board issued a Notice of Intention to Deny (NOI) Applicant’s application for reinstatement on March 26, 2015. The Board attempted to serve the NOI on numerous occasions, and ultimately succeeded in serving the NOI on May 20, 2015. Applicant did not request a hearing. Accordingly, under 17 DCMR § 4103,¹ the Board issues this final decision and order to deny the application for reinstatement.

Findings of Fact

The Board makes the following findings of fact from the application record before the Board:²

1. Applicant has been licensed to practice medicine in the District of Columbia since 1993, and currently practices in Nigeria.
2. On August 11, 2013, Applicant applied for reinstatement of his revoked medical license in the District of Columbia.

¹ “If a person who was sent a [notice of intent to take disciplinary action] does not mail or deliver a request for hearing within the time and in the manner required under [17 DCMR § 4102], a board may, without a hearing, take the action contemplated in the notice.” 17 DCMR § 4103.1.

² A board may take official notice on its own motion, of material facts in the official files of a board or the Department or other District agency. 17 DCMR § 4110.4(b)

3. In his application for reinstatement, Applicant disclosed that he settled a malpractice case at Howard University Hospital (HUH) in 2001 when he was an attending physician at HUH. The malpractice case was the result of Applicant's sexual relationship with a patient at HUH. Based on Applicant's conduct at HUH, the Board, on July 25, 2001, reprimanded Applicant, placing him on probation for three years. The malpractice case was subsequently settled for \$1,500,000 on June 16, 2011.

4. Applicant appealed the Board's reprimand to the D.C. Court of Appeals, which affirmed the Board's decision.

5. On or about March 26, 2003, the Maryland Board of Medicine (the "Maryland Board") suspended Applicant's medical license for three years for filing a fraudulent application by failing to disclose the Board's disciplinary action against him. Thereafter the Board, on December 21, 2005, filed a reciprocal order placing Applicant on probation for one year.

6. Applicant further disclosed on his 2013 license application a conviction for Medicaid fraud. According to the information Applicant provided, the Maryland Board found that, on or about June 7, 2006, Applicant pled guilty to five misdemeanor counts of Medicaid fraud in the Circuit Court for Baltimore City, Maryland.

7. Consequently, as a result of the criminal conviction, the Maryland Board, on or about October 24, 2007, revoked Applicant's license, and he resigned his position at Walter P. Carter Center in Baltimore, MD.

8. As a result of the Maryland Board's actions, the Board, on October 31, 2007, again took reciprocal action, suspending Applicant's license for one year.

9. On or about November 29, 2007, the Virginia Board placed Applicant's license on indefinite probation based on actions taken by both the Maryland and D.C. Boards.

10. On August 21, 2008, the Board revoked Applicant's medical license for practicing medicine while his license to do so was suspended on various dates between November 7, 2007 and December 7, 2007.

Applicable Law

The Health Occupations Revision Act (HORA) authorizes the Board to regulate the practice of medicine in the District of Columbia. D.C. Official Code § 3-1201.01, *et seq.* (2014, as amended). In the District of Columbia, "An individual applying for a license under [the HORA] shall establish to the satisfaction of the board regulating the health occupation that the individual . . . [m]eets any other requirement established by the Mayor by rule to assure that the applicant has had the proper training, experience, and qualifications to practice the health occupations." D.C. Official Code § 3-1205.03. The Board may deny a license to any applicant who is professionally or mentally incompetent or physically incapable. *Id.*, § 3-1205.14(a)(5). Therefore, an applicant for licensure must "establish to the Board's satisfaction that the applicant possesses appropriate skills, knowledge, judgment, and character to practice medicine." DCMR § 17-4600.4.

Indeed, the Board "has broad jurisdiction to regulate the practice of medicine and to impose a variety of disciplinary sanctions upon persons applying for or renewing their license to practice medicine in the District of Columbia[.]" *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 "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*, 558 A.2d 48, 50 (D.C.1993). Even where an applicant may be licensed in another state, the Board has the discretion to review each applicant’s application for licensure, giving relevant consideration to intervening experience and accomplishments since the circumstances at the time of original licensure, notwithstanding current licensure and good standing in another state or territory. *Tinner v. District of Columbia Dept. of Consumer and Regulatory Affairs*, 703 A.2d 833, 836 (D.C.1997) (Board of Medicine’s denial of license to practice medicine by endorsement and reciprocity to applicant licensed in New York, New Jersey and Maryland was not arbitrary and capricious where denial was rationally based to standards set by District of Columbia Board of Medicine under District of Columbia law).

Conclusions of Law

Under the HORA, the Board, subject to the right of a hearing as provided by the HORA, may take one or more of the disciplinary actions provided in §3-1205.14(c) against any applicant, including denying a license, for conduct enumerated under D.C. Official Code § 3-1205.14(a)(1) through (a)(50). Upon determination by the Board that an applicant has committed any of the acts described in § 3-1205.14(a) of the HORA, the Board may deny a license to any applicant. D.C. Official Code § 3-1205.14(c).

Here, Applicant was disciplined by the Maryland Board on two occasions, first for filing a fraudulent application by failing to disclose the discipline he received by this Board, and

second following his criminal conviction for Medicaid fraud. Therefore, Applicant was disciplined by a licensing authority for which the Board may take disciplinary action under the D.C. Official Code § 3-1205.14(a)(3).

Moreover, the District of Columbia Municipal Regulations § 17-4600.8 provides:

An applicant who holds a license in another jurisdiction shall not be eligible for a license if one of the following applies: * * *; (c) The applicant has engaged in conduct that would be grounds for disciplinary action under § 514(a) of the Act, D.C. Code § [3-1205.14]³; or (d) The applicant is not in good standing in a jurisdiction in which the applicant holds a license.

Here, Applicant was engaged in conduct that would be grounds for disciplinary action under the HORA, and Applicant is not in good standing in either Maryland or in Virginia, where his license is encumbered. Therefore, Applicant is not eligible for licensure.

Finally, the Board may take disciplinary action, under D.C. Official Code § 3-1205.14(c), against any applicant for a license who fails to conform to standards of acceptable conduct and prevailing practice within a health profession in violation of D.C. Official Code § 3-1205.14(a)(26). Here, Applicant's conduct in attempting to conceal his disciplinary history, having been convicted of Medicaid fraud, and having a sexual relationship with a patient while an attending physician all amount to conduct that do not conform to the standards of acceptable conduct and prevailing practice within the practice of medicine.

Therefore, based upon Applicant's actions, the sanctions by the Maryland and Virginia Boards, and the Board's conclusion that Applicant has not been rehabilitated since the revocation

³ Since the promulgation of these regulations, the statute has been amended and the sections have been re-numbered under the HORA. The substance of the statute has not changed materially with the amendments. That the regulation refers to a repealed and previously different numbered section of the HORA does not diminish the applicability of the HORA under its currently numbered version. See *Davidson*, 562 A.2d at 111 (quoting *Mannan*, 558 A.2d at 331-32 (“[I]n the absence of a showing of prejudice, an erroneous citation in a revocation notice to a statute repealed by the Revision Act will not divest the Board of jurisdiction to discipline an applicant where ‘[t]he same conduct was cause for discipline under both statutes and the same disciplinary sanctions existed for such conduct.’”)).

of his license, the Board denies Applicant's application for reinstatement. Moreover, Applicant's encumbrances on his extra-territorial licenses give rise to an additional basis to deny his application for licensure, based on his failure to conform to standards of acceptable conduct and prevailing practice of his health profession. In short, Applicant failed to "establish to the satisfaction of the [B]oard . . . that [he]. . . [m]eets any other requirement established by the Mayor by rule to assure that the applicant has had the proper training, experience, and qualifications to practice the health occupations." D.C. Official Code § 3-1205.03.

ORDER

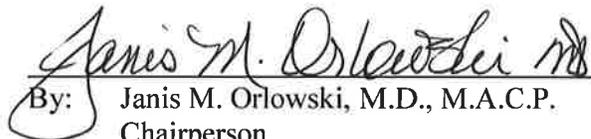
UPON CONSIDERATION of the application of Oparaugo Udbiuwa, M.D., Applicant herein, and the entire record before the Board, it is by the District of Columbia Board of Medicine,

ORDERED, that the application of Oparaugo Udbiuwa, M.D. for licensure as a physician be DENIED.

ORDERED, that this is a public document.

DISTRICT OF COLUMBIA BOARD OF MEDICINE

10.28.15
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. 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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