

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

IN RE :
 :
HAZEM GARADA, M.D. :
MD045223 :
Applicant :

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 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 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.

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) decided 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 Your license to practice a health occupation was revoked or suspended in another state and the basis of the license revocation or suspension would have caused a similar result in the District.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) (2012 Repl.), 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) (2012 Repl.). In accordance with D.C. Official Code § 3-1205.14(c)(1) (2012 Repl.), 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) (2012 Repl.). In accordance with D.C. Official Code § 3-1205.14(c)(1) (Repl.), 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) (2012 Repl.). In accordance with D.C. Official Code § 3-1205.14(c)(1) (Repl.), 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) (2012 Repl.). In accordance with D.C. Official Code § 3-1205.14(c)(1) (Repl.), 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 (2012 Repl.). 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 (2012 Repl.), the Board may therefore deny your application for license.

These bases stemmed from disciplinary actions taken against Applicant by other state licensing boards, multiple convictions for fraud (including charges stemming directly from his medical practice), the extended length of time Applicant had gone without practicing medicine, and the overall judgement 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. 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 of The Board was provided to both parties on July 15, 2019¹. 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 makes the following findings, addressing Respondent's exceptions as they are relevant:

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, and began his practice of medicine in West Virginia under a visa sponsorship J-1 waiver program. (Board Ex. 200 p. 11).²

¹ 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.

² "Board Ex." corresponds to "RX" in the ALJ's Recommended Decision.

Respondent took exception to the Board's failure to credit him with two years of medical practice in Kuwait from approximately 1988 – 1990. The Board declines to address his practice in Kuwait; rather it is Respondent's practice in the United States which is of relevance to his application. Therefore no change to this finding has been 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. (Board Ex. 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 Defraud or Harm the Public, Sexual Misconduct, Unethical Conduct." (Board Ex. 200 p. 15). Applicant contends 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 asserts that the West Virginia charge was in retaliation for being a "whistleblower." The case before the D.C. Board of Medicine is not an opportunity to relitigate the West Virginia case. The West Virginia Board of Board of Medicine found a violation and suspended Dr. Garada for "conduct likely to deceive or defraud or harm the public, sexual misconduct, [or] sexual misconduct." Applicant does not dispute that his West Virginia license was suspended based on the above finding. He 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.

4. Applicant's West Virginia medical license lapsed and was deemed to have expired on June 30, 1996, but remained "encumbered." (Board Ex 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. (Board Ex. 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. (Board Ex. 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. (Board Ex. 201 p. 50; Applicant Ex. 104 p. 140).³ Applicant does not dispute the Board's finding that Kentucky did not find a violation and closed the complaint against him without taking action. Instead he takes exception to the fact that the Board did not include more information about the Kentucky finding. The Board did not find additional information relevant to the decision. Because the Applicant does not actually dispute the finding of fact # 6, and because the Board does not find additional information relevant to its decision, no changes have been made to this finding.

7. As of March 22, 2017, Applicant's medical license in Kentucky was deemed "inactive." (Board Ex. 200 p.24; Applicant Ex. 108 p. 24). Applicant did object to the Board's Conclusion 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 the conclusion was changed to reflect that correction.

8. On August 23, 1996, the State Medical Board of Ohio issued Applicant a license to practice. (Board Ex. 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

³ "Applicant Ex." corresponds to "PX" in the ALJ's Recommended Decision.

an indefinite period of time, but not less than six (6) months.” This action was taken as a result of his failure to report the disciplinary action taken against his medical license in West Virginia, and his failure to report the medical complaint filed against him in Kentucky. (Board Ex. 201 p. 41-63).

Applicant filed an exception to this finding asserting that the Board “deleted” facts about the Ohio disciplinary action. He claims that the Ohio application required him to list any “*formal*” investigations of his license. But in fact, 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?” Further, the Ohio hearing examiner explicitly found that the question did not contain the limiting word “formal.” At the time Dr. Garada answered “No” to this question, on or about June 30, 1996 he had already provided a written response to a Kentucky complaint on May 29, 1995 and appeared in front of the Kentucky Complaint Committee. 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.” On the very next day, July 1, 1996, Dr. Garada was notified of the West Virginia complaint and failed to notify the Ohio board.

Applicant also takes exception to the finding that his Ohio license was suspended in 1998 for “failure to disclose the West Virginia action on his Ohio licensing application.” He argues 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 before he was suspended. However, Applicant

had an ongoing duty to disclose any disciplinary action taken against his license. Once West Virginia suspended his license, he had a duty to disclose the discipline to the Ohio board which he failed to do. Further, he was notified of the West Virginia complaint soon after he submitted the Ohio application. The Ohio application was very clear that he must amend his application if any charges or investigations occurred in the interim period between submission and a final determination. Applicant failed to update his application, just as he had failed to include the Kentucky investigation on the initial application. While he is technically correct that his Ohio license was not suspended for failure to disclose the West Virginia disciplinary action on his Ohio application, the license was in fact suspended for failure to report the West Virginia disciplinary action during the licensing period and failure to report the Kentucky investigation on the initial application. Therefore this finding will not be changed.

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. (Board Ex. 200 p. 16).

11. 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. (Board Ex. 200 p. 17). Applicant's Ohio license was permanently revoked on May 27, 2004. (Board Ex. 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.

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

13. 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. Applicant failed to disclose the suspension of his Ohio license when he applied for his Virginia license. (Board Ex. 201 p. 40).

14. 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 the two fraudulent answers he provided on his 1995 Virginia medical license application. (Board Ex. 201 pp. 35-36).

15. On December 16, 2003, the Virginia Board of Medicine (Virginia Board) reprimanded Applicant for violating medical practice laws in Virginia by making false statements during a Department of Health Professionals' investigation, and ordered him to pay a \$1,000.00 fine. (Board Ex. 201 pp. 26-27).

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. In a resultant plea agreement Applicant agreed to, "forfeit and relinquish permanently [his] license to practice medicine in all jurisdictions..." and he agreed to pay a minimum restitution amount of \$190,181.00. *U.S. v. Hazem Garada*, 1:03CR00571-001, March 1, 2004. (Board Ex. 200 pp. 248-256). As a result of the conviction, the Virginia Board suspended Applicant's medical license on August 12, 2004. (Board Ex. 201 p. 18).

17. Applicant later filed with the District Court a motion asserting the plea agreement 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. (Applicant Ex. 104 p. 85).

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

19. 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. (Board Ex. 204).

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

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

22. 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. (Board Ex. 200 p. 65).

23. 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. (Board Ex. 200

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

24. 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 "under seal." Applicant had a full opportunity to present evidence at the hearing before the ALJ, and the evidence alluded to does not change the findings stated above. His remaining exceptions were not relevant to the findings above. Finally, the Board does not credit Applicant's exception that he did not get procedural due process. All of the procedural requirements were followed and Applicant received a full evidentiary hearing on these matters.

Conclusions of Law

The Board accepts the Conclusions of Law of the ALJ with the correction to Conclusion 4 and Conclusion 8, as detailed below. The ALJ found that:

1. Applicant's West Virginia medical license was suspended for "inappropriate, insensitive, unprofessional, unethical, and dishonorable conduct" with female patients. (Board Ex. 200 pp. 3-4).
2. Applicant's Ohio medical license was indefinitely suspended, during a stay of its permanent revocation, for failure to disclose the West Virginia disciplinary action on Applicant's Ohio licensing application.
3. Applicant's Virginia medical license was "administratively 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 administratively suspended, not revoked.

4. Applicant's medical license was suspended or revoked in three (3) separate states. Pursuant to D.C. Official Code § 3-1205.03(c), Applicant's medical license was suspended or revoked in another jurisdiction, and the bases for that revocation or suspension would have led to similar disciplinary actions in the District of Columbia.

5. Applicant's SPEX score and CPEP assessment indicate that, though he needs additional training and education, his deficiencies do not rise to the level of professional incompetence. Accordingly, the Applicant is not professionally incompetent, pursuant to D.C. Official Code § 3-1205.14(a)(5). However his history of practice, including, for instance, his practice in Kentucky which that Board found "barely adequate" in combination with the need for additional training and education do not compel licensure.

6. The record shows, and Applicant does not dispute, that he was convicted of felony health care fraud in 2004 when he pleaded guilty to defrauding Medicare. Accordingly, Applicant violated D.C. Official Code § 3-1205.14(a)(25) and D.C. Official Code § 3-1205.14(a)(45).

7. The West Virginia Board concluded that Applicant engaged in lewd or offensive behavior with a female patient during the patient-physician relationship. Applicant does not dispute the facts, but argues that his actions were unintentional. Accordingly, Applicant engaged in sexual conduct that a reasonable person would consider lewd or offensive, in violation of D.C. Official Code § 3-1205.14(a)(23)(c).

8. Three of the four medical licenses⁴ that Applicant has held in the United States were suspended or revoked at some time for reasons including: (1) failure to report prior disciplinary actions on medical licensing applications, (2) making false statement during

⁴ This finding has been changed from the ALJ's finding that all of Applicant's medical licenses in the United States were either suspended or revoked.

Department of Health Professionals investigations, (3) sexual and/or unprofessional conduct, and (4) felony healthcare fraud. Further in 2012, while unlicensed, Applicant pleaded guilty to credit card fraud. Applicant's history of poor ethical judgments, multiple fraud convictions, and multiple disciplinary actions from multiple medical licensing boards indicate that he does not possess the appropriate skills, knowledge, judgment, and character to practice medicine in the District of Columbia. D.C. Official Code § 3-1205.03(a)(5); 17 DCMR § 4600.4.

Summary

Based on foregoing conclusions of facts and law, the ALJ recommended that the Notice of Intent to Deny Application be affirmed. The Board accepts the ALJ's recommendation.

ORDER

UPON CONSIDERATION of the evidence and testimony presented at the hearings in the matter on November 8, 2017 and November 15, 2017 and the entire record herein, it is this November 9, 2021, **ORDERED** that the medical license application of Hazem Garada, M.D., shall be and is hereby **DENIED**.

DISTRICT OF COLUMBIA BOARD OF MEDICINE

11.09.2021

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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