

**BEFORE THE
MEDICAL BOARD OF CALIFORNIA
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA**

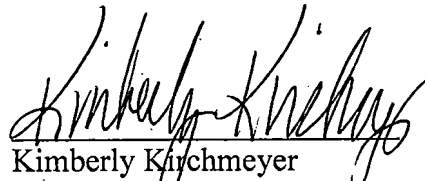
In the Matter of the Statement of Issues Against:)	
)	MBC No. 800-2018-044536
PAUL JEFFREY SCHWARTZ)	
)	
)	ORDER GRANTING STAY
)	
)	(Government Code Section 11521)
)	
<hr/> Applicant)	

Jeffrey Kravitz, Esq. on behalf of applicant, Paul Jeffrey Schwartz, has filed a Request for Stay of execution of the Decision in this matter with an effective date of February 8, 2019, at 5:00 p.m..

Execution is stayed until March 8, 2019, 5:00 p.m.

This stay is granted solely for the purpose of allowing the Applicant to file a Petition for Reconsideration.

DATED: February 1, 2019


Kimberly Kirchmeyer
Executive Director
Medical Board of California

**BEFORE THE
MEDICAL BOARD OF CALIFORNIA
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA**

**In the Matter of the Statement of)
Issues Against:)**

PAUL JEFFREY SCHWARTZ)

Applicant)
_____)

Case No. 800-2018-044536

OAH No. 2018080822

DECISION AND ORDER

The attached Proposed Decision is hereby amended, pursuant to Government Code section 11517(c)(2)(C) to correct technical or minor changes that do not affect the factual or legal basis of the proposed decision. The proposed decision is amended as follows:

- 1. Page 8, in the Order, the middle name is corrected to read "Jeffrey."**

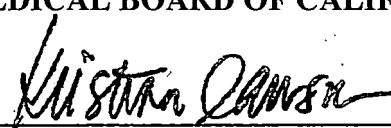
The attached Proposed Decision is hereby adopted as the Decision and Order of the Medical Board of California, Department of Consumer Affairs, State of California.

This Decision shall become effective at 5:00 p.m. on February 8, 2019.

IT IS SO ORDERED January 9, 2019.

MEDICAL BOARD OF CALIFORNIA

By: _____


**Kristina D. Lawson, J.D., Chair
Panel B**

BEFORE THE
MEDICAL BOARD OF CALIFORNIA
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA

In the Matter of the Statement of Issues
Against:

PAUL JEFFREY SCHWARTZ,

Applicant.

Case No. 800-2018-044536

OAH No. 2018080822

PROPOSED DECISION

This matter was heard before Melissa G. Crowell, Administrative Law Judge, Office of Administrative Hearings, State of California, on November 15, 2018, in Oakland, California.

Jane Zack Simon, Supervising Deputy Attorney General, represented complainant Kimberly Kirchmeyer, Executive Director of the Medical Board of California.

Jeffrey Kravitz, Attorney at Law, Kravitz & Chan, represented applicant Paul Jeffrey Schwartz, who was present.

The record was closed and the matter was submitted for decision on November 15, 2018.

FACTUAL FINDINGS

1. Complainant Kimberly Kirchmeyer made and filed the Statement of Issues in her official capacity as Executive Director of the Medical Board of California.

2001 Application for Licensure

2. Applicant Paul Jeffrey Schwartz first applied for a Physician's and Surgeon's Certificate (certificate) in April 2001. During the Board's evaluation of the application, it determined that applicant had not disclosed that he had been placed on academic probation during his fourth year of post graduate training (PGY-4) at the University of Cincinnati

College of Medicine, Department of Psychiatry (1986-1987).¹ In order to receive credit for the year, applicant was required to take and pass a mock oral board examination at the end of the year, which he did not pass. Applicant did not receive credit for his PGY-4, was not permitted to repeat his PGY-4, and his contract for the following year was not renewed. Several years later in 1989, applicant completed his PGY-4 at Yale University.

3. After much correspondence and request for additional information from applicant in connection with this application, the Board ultimately granted applicant an unrestricted certificate on September 5, 2003, issuing him Physician's and Surgeon's Certificate Number G 87010. Applicant failed to renew the certificate after it expired, and it was cancelled on September 30, 2007.

2018 Applicant for Licensure

4. Pursuant to Business and Professions Code section 2428 a physician whose certificate has been expired for five or more years may not renew the license, but must apply for a new license and meet all the requirements for licensure.

5. Applicant filed a second application for a certificate on March 2, 2018. When he signed the application on February 27, 2018, he certified under penalty of perjury to the truthfulness of all the statements, answers, and representations he made in the application. And he was advised that his application could be denied on the basis of omission, falsification or misrepresentation of any item or response on the application or an attachment.

6. The application posed a series of questions regarding postgraduate training. Applicant was asked:

17. Have you ever received partial or no credit for a postgraduate training program?

18. Have you ever taken a leave of absence or a break from your training?

19. Have you ever been terminated, dismissed or expelled from a program?

20. Have you ever been placed on probation for any reason?
[] . . . []

22. Have you ever had any limitations or special requirements placed upon you for clinical performance, professionalism, medical knowledge, or for any other reason?

¹ Applicant received credit for postgraduate years 1, 2 and 3.

23. Have you ever had a postgraduate training program contract not be renewed or offered for a following year?

Applicant answered each question "No." As set forth above in Finding 2, applicant's answers were false, and he knew them to be false.

7. The Board asked applicant to explain the discrepancies on his 2018 application. In response, applicant wrote on April 9, 2018:

With regard to the question as to why I omitted endorsing items 17-23 on my recent application to the California Medical Board, it was because I had a competitive job offer from an organization in San Diego pending my ability to very quickly obtain an active California Medical License. As I recalled, the first time I applied for my California Medical License over a decade ago, it took many months in order to get approved, in large part because of the need to unearth all the details of what occurred during my fourth year of residency at the University of Cincinnati. As such, upon realizing that a full application was again required, I felt that I had little hope of securing this present, competitive, time-sensitive job offer in San Diego, since that job would not have waited many months for my California medical license to get approved. I therefore made a foolish assumption that since a full application was again required (and not some streamlined reapplication since my last application), perhaps my previous application (with my previous full disclosure about the R4 year in Cincinnati) might no longer be available to the California Medical Board, and that my otherwise uneventful and extensive record of 19 years of distinguished federal service would have helped to expedite my present application for a California medical license, and thereby given me a chance to secure the competitive job offer in San Diego. I therefore did not check any of the relevant items 17-23 hoping it would expedite the process. I apologize for this embarrassing and seemingly deceitful omission. I therefore am once again re-submitting to you my best recollection of this ancient but still painful debacle that has already been fully disclosed at multiple steps along the way in my career, having been extensively vetted at the National Institutes of Health and at the Veterans Affairs twice.

8. Following review of his 2018 application, the Board advised applicant by letter dated June 4, 2018, that it had determined he did not qualify for a full and unrestricted

license, but it would grant him a probationary license. Applicant advised the Board that he did not agree with that decision, and requested a hearing.

9. On August 11, 2018, applicant wrote a letter to complainant's counsel. In this letter, applicant acknowledged that he had provided false information on his 2018 application and that he had done so in order to expedite its approval so he could take advantage of the California job opportunity. Applicant then suggested that it was the Board's reapplication process that was the cause of the false information, not his own conduct. He wrote:

I now maintain that my failure to fully disclose my 1986 difficulties on my 2018 MBC application was a desperate, uncharacteristic, and untoward reaction that I manifested under the extreme duress of being required by the MBC to again cough up these very difficult and painful events that I had previously gone to great lengths to provide and that the MBC already had in its possession.

In effect, I am suggesting that my providing false information under duress to the oppressive MBC was not unlike the false information that may be obtained during the course of being unreasonably and repeatedly interrogated under waterboarding, and as such should not be grounds for either legal conviction or for the MBC to withhold my full and unrestricted CA medical license!

10. With respect to his PGY-4 at Cincinnati, applicant explained that it was a difficult year for him. During that year his mother died of cancer. It was because of his mother that he had attended medical school, as his own path would have taken him to Ph.D. program in physics. Her death affected him profoundly. His work and his attitude deteriorated, and he became antagonistic with the residency director, who was also his personal psychoanalyst, and other faculty. He was provided a new residency director, but he did not get along with him, either. While petitioner was never relieved of clinical or administrative duties and carried a full caseload, he was failed by the program on his mock board oral exam. Applicant's still finds it painful to discuss this year of his life.

11. At hearing, applicant suggested that the Board should view his 2018 application as an update to his 2001 application. He suggests that if viewed in this light, there was no omission on his 2018 application. He further suggested that the Board should look at his track record as a physician and his demonstrated professional integrity, and not focus on "the minor pimple" of his California application.

Other Matters

12. In addition to holding a certificate in California, applicant has been licensed to practice medicine in Ohio, Connecticut and Maryland. Currently he is licensed only in Ohio,

where he has been licensed since 1984. He has never been the subject of license discipline by any state.

13. Applicant completed medical school at the University of Cincinnati College of Medicine in June 1983. After dismissal from the post graduate training program in psychiatry, applicant took an inpatient psychiatrist position at the Rollman's Psychiatric Institute in Cincinnati from 1987 to 1989. Following completion of his PGY-4 at Yale University in 1990, applicant served from 1990 to 1997 as a research fellow at the National Institute of Mental Health. Thereafter he held clinical positions at the Veterans Administration Medical Center in Cincinnati (1999 to 2000) and in Dayton (2001 to 2011). From 2011 to 2013, applicant performed outpatient psychiatry at Community Behavioral Health in Hamilton, Ohio. From 2013 to 2014, he performed inpatient psychiatry at Beckett Springs Hospital in West Chester, Ohio.

14. Applicant has operated a private outpatient psychoanalytic practice in West Chester since 2012. His practice is a mixture of psychoanalysis and medication management.

Applicant received his board certification in psychiatry from the American Board of Psychiatry and Neurology in 2000, and has maintained it since then.

15. Applicant recently completed five years of training at the Cincinnati Psychoanalytic Institute, one of 30 institutes in the American Psychoanalytical Association. As a candidate/trainee in the Adult Psychoanalytical Training program, applicant attended classes, lectures and workshops, and was supervised by a Training and Supervising Psychoanalyst. Supervision involves weekly meetings where the candidates present their work. The Supervisor reports on the candidate's progress to the Progression Committee.

16. Two of applicant's supervisors at the institute wrote recent letters in support of his application.

Samuel T. Robinson, M.D., is a Training and Supervising Psychoanalyst at the Cincinnati institute. He first met applicant as a medical student assigned to him for six months during his third year of residency. He later became applicant's supervisor at the institute. Dr. Robinson reports that applicant made solid progress over time at the institute. Applicant was exceedingly punctual, organized and dedicated. He was well-liked by his peers and his instructors. Dr. Robinson found applicant to be "an upstanding individual and, if anything, well above average in admitting his mistakes and revealing his weaknesses and is general tendency [sic] to be honest." In his opinion, applicant is honest and approaches his interactions with others with integrity.

Sydney F. Anderson, Ph.D., is a Co-Director of the institute. She has worked intensively with applicant for five years. She reports that he has been dedicated, organized and responsible in his approach to his patients and to supervision. She has not had or observed any interactions involving applicant that would cause her to question his integrity or honesty.

17. Applicant has a lengthy list of publications. His publications from earlier in his career were research-based. His publications now are medical hypothesis-based for which he earns continuing education credits.

LEGAL CONCLUSIONS

1. Applicant bears the burden of proving by a preponderance of the evidence that he is fit for licensure. (*Breakzone Billiards v. City of Torrance* (2000) 81 Cal.App.4th 1205, 1224; Evid. Code, §§ 115 & 500.)

2. Business and Professions Code section 480, subdivision (a)(2), authorizes the Board to deny a license to an applicant who has done "any act involving dishonesty, fraud or deceit with the intent to substantially benefit himself or another, or substantially injure another." The Board may deny a license pursuant to Business and Professions Code section 480, subdivision (a)(2), only if the wrongful act is "substantially related to the qualifications, functions or duties of the business or profession for which application is made." (Bus. & Prof. Code, § 480, subd. (a)(3)(B).) Applicant was placed on academic probation during his PGY-4 training at the University of Cincinnati. (Finding 2.) Applicant was required to take and pass a mock oral board examination which he failed. (Finding 2.) Applicant did not receive credit for his PGY-4, and his contract was not renewed. (Finding 2.) By answering "No" to Questions 17-23 on his application for licensure (Findings 2, 5 & 6), applicant engaged in acts involving dishonesty, fraud and deceit with respect to his post graduate training program. These dishonest acts are substantially related to the qualifications, functions or duties of a physician. Cause therefore exists to deny this application for a physician's and surgeon's certificate pursuant to Business and Professions Code section 480, subdivision (a)(2).

3. Business and Professions Code section 480, subdivision (d), authorizes the Board to deny a license to an applicant who has "knowingly made a false statement of fact required to be revealed in the application for such license." By answering "No" to Questions 17-23 on his application for licensure (Findings 2, 5 & 6), applicant knowingly made false statements of fact required to be revealed on his application with respect to his post graduate training program. Cause therefore exists to deny this application for a physician's and surgeon's certificate pursuant to Business and Professions Code section 480, subdivision (d).

4. Business and Professions Code section 480, subdivision (a)(3)(A), authorizes the Board to deny a license to an applicant who has done "any act which if done by a licentiate of the business or profession in question, would be grounds for suspension or revocation of license." Business and Professions Code section 2221 permits the Board to deny a license to an applicant who has committed unprofessional conduct or any conduct that would subject a licensee to license suspension or revocation.

Business and Professions Code section 2234 permits the Board to suspend or revoke a license for unprofessional conduct. Applicant's dishonest and false statements regarding his

post graduate training, if done by a licensee in California, would constitute unprofessional conduct and provide cause for license suspension or revocation pursuant to Business and Professions Code section 2234. Business and Professions Code section 2234, subdivision (e), permits the Board to suspend or revoke a license for conduct which indicates dishonesty or corruption that is substantially related to the qualifications, functions or duties of physician and surgeon.

Applicant's dishonest and false statements regarding his post graduate training are acts involving dishonesty or corruption that are substantially related to the qualifications, functions or duties of a physician and surgeon. These acts, if done by a licensee in California, would constitute cause for license suspension or revocation pursuant to Business and Professions Code section 2234, subdivision (e). Cause therefore exists to deny this application for a physician's and surgeon's certificate pursuant to Business and Professions Code sections 480, subdivision (a)(3)(A), and 2221.

Discussion

5. Cause for denial having been established, the remaining consideration is whether applicant has demonstrated sufficient rehabilitation to warrant the issuance of a certificate to him. Business and Professions Code section 2229 mandates that the Board's highest priority is protection of the public. When the protection of the public is inconsistent with other interests sought to be promoted, the protection of the public is paramount. (*Ibid.*)

Applicant has been licensed as a physician since 1984 outside of California without issue or discipline. He has twice sought licensure in this state and each time misrepresented his post graduate training in order to expedite license approval. The first time he did this, he was granted an unrestricted license which he never utilized. Knowing that it took him almost three years to achieve licensure on his 2001 application because he had not been forthright about his PGY-4, one would have expected a different approach with the second application. To the contrary, applicant again hid the issues that arose during his PGY-4 from the Board's attention hoping to expedite approval of his application.

To his credit, applicant has acknowledged that he falsified his application in 2018, and he was candid about his motive. What applicant does not appreciate is that the concerns raised by his 2018 application are not issues stemming from his PGY-4 but about his honesty. Intentional dishonesty demonstrates a lack of moral character and can indicate unfitness to practice medicine. (*Matanky v. Board of Med. Examiners* (1978) 79 Cal.App.3d 293, 305.) It also must be recognized that applicant has not expressed any remorse or insight into the misrepresentation on his license application. Even at hearing, applicant attempted to justify his nondisclosure on a different basis, calling the 2018 application supplemental to his 2001 application. This does not square with either the requirements of the Medical Practice Act or the Board's instructions to previously licensed physicians. The expression of remorse and the taking of responsibility for past misconduct are relevant to assessing rehabilitation, just as are the absence of remorse and the failure to take responsibility are factors in aggravation. (*Seide v. Committee of Bar Examiners* (1989) 49 Cal.3d 933, 940.)

The time for processing the 2018 application increased because of applicant's nondisclosure. This delay fueled applicant's anger and distain toward the Board and the Board's reapplication process, as evidenced by applicant's letter suggesting he has been subject to unreasonable interrogation by the Board. The Board also may take into account an accused physician's attitude toward disciplinary proceedings. (*Landau v. Superior Court* (1988) 81 Cal.App.4th 191, 223; *Yellen v. Board of Medical Quality Assurance* (1985) 174 Cal.App.3d 1040, 1059.)

The parties have divergent opinions as to what is necessary for public protection in this case. Applicant argues he should be given an unrestricted license as before, but with a public letter of reprimand for his admitted falsification of his application. He does not want a probationary license. Complainant argues that applicant's violations are not minor, and that he should be denied a license outright based on his conduct with the Board. Complainant is justifiably concerned that applicant is unwilling or unable to communicate honestly with the Board, which constitutes a threat to public protection. It is also of concern that as a physician applicant will say whatever needs to be said in order to achieve his goals.

All things considered, it is concluded that applicant has not presented weighty evidence of rehabilitation from the dishonest acts he committed in the 2018 application process. The Board may issue a certificate with a public letter of reprimand to an applicant who has committed minor violations that do not merit the denial of a certificate or warrant probation. (Bus. & Prof. Code, § 2221.05.) This is not a case of a minor violation, and for that reason, a public reprimand is not appropriate. Applicant has made it clear that he is not willing to be subject to probation monitoring. But even if he were agreeable, based on his conduct with the Board to date, putting applicant on probation would raise public protection concerns. The only option available to the Board on this application that is consistent with public protection, then, is denial.

ORDER

The application of Paul Michael Schwartz for a physician's and surgeon's certificate is denied.

DATED: December 6, 2018

DocuSigned by:

Melissa G. Crowell

MELISSA G. CROWELL

Administrative Law Judge

Office of Administrative Hearings