GOVERNMENT OF THE DISTRICT OF COLUMBIA
BOARD OF MEDICINE

IN RE:	:
GEORGE S. LAKNER, M.D.	:
License No.: MD16011	:
Respondent	:

FINAL ORDER OF THE BOARD

This matter comes before the District of Columbia Board of Medicine (the "Board") on Respondent, Dr. George S. Lakner, M.D.'s exceptions to the recommended decision and order issued by a panel of the Board (Board Panel) following an evidentiary hearing. The Board Panel recommended that the Board reprimand Respondent as a reciprocal sanction, based on the disciplinary actions taken by the licensing authorities of California and Maryland.[1] For the reasons stated below, the Board adopts the Board Panel's recommended decision and order.

Procedural Background

On February 1, 2010, the Board served an Amended Notice of Intent to Take Disciplinary Action against Respondent's District of Columbia medical license[2] (the "Notice"). Based upon disciplinary actions taken against Respondent by the licensing authorities of Illinois, Maryland, California, and Nevada, the Notice charged Respondent with four counts of having been

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[1] As discussed in detail below, the Amended Notice of Intent to Take Disciplinary Action gave notice to Respondent that the Board intended to take action based on disciplinary actions taken by the licensing authorities of California, Nevada, Illinois and Maryland. As discussed in detail below, the Board Panel sustained the allegations regarding the disciplinary actions taken by the licensing authorities of California and Maryland, but did not sustain the allegations regarding the disciplinary actions taken by the licensing authorities of Illinois and Nevada.

[2] Tr. 12/19/12 P. 7, L. 17-18.

disciplined by a licensing or disciplinary authority for conduct that would be grounds for disciplinary action under D.C. Official Code §§ 3-1205.14(a)(1), (8), and (24) (for violating §3-1210.04), for which the Board may take action under D.C. Official Code § 3-1205.14(a)(3). Respondent timely requested a hearing.

The Board convened a Board Panel to hear the case on December 19, 2012. Initially, the Board Panel was comprised of Miriam A. Markowitz, consumer member of the Board who presided over the hearing, Jeffrey P. Smith, M.D., physician member of the Board, and Bernard Arons, M.D., physician member of the Board. After the December 19, 2012 hearing date, but before the Board Panel reconvened, Ms. Markowitz resigned her Board position. Howard M. Liebers, another consumer member of the Board, replaced Ms. Markowitz on the Board Panel.[3]

The hearing on December 19, 2012, did not conclude, and was suspended to allow Respondent and the Government to attempt an alternative disposition of the merits of the case after some of the Government's evidence was received. During the Respondent's case-in-chief, Respondent testified and produced evidence indicating that the Nevada State Board of Medical Examiners had rescinded its action to permanently revoke Respondent's medical license, and had since restored Respondent's license to full and complete status. (Tr. 12/19/12 P. 25, L. 18-22; P. 26, L. 1-17; P. 39, L. 15-21; Gov. Ex.1). Respondent further testified that disciplinary actions against his license had similarly been lifted in Virginia, Maryland, Pennsylvania, Connecticut,

[3] Respondent asserts that the substitution of Mr. Liebers for Ms. Markowitz provides a basis to reject the recommended decision. Even if Respondent's assertions were credited, the other two Board Panel members, Dr. Smith and Dr. Arons, constituted the majority decision of the Board Panel. Moreover, the record of the December 19, 2012 hearing has been fully available to Mr. Liebers for his consideration, and the more salient part of the hearing, as far as Respondent may be concerned occurred on September 12, 2013, when Respondent presented his case in chief. The Government's case consisted mainly of documentary evidence introduced through a Board staff solely for authentication purposes. Mr. Liebers is just as able to assess the quality and quantum of the Government's evidence post-December 19. Accordingly, Respondent's exception in this regard is rejected.

Massachusetts, and Kansas. (Tr. 12/19/12 P. 48, L. 6-20). In response to this evidence produced by Respondent, a full query was run in the National Practitioner DataBank with respect to the status of Respondent's then current licensure status. The result was a 52 page document that stated the status of the disciplinary actions taken against Respondent's medical license. The Board suspended the hearing, with consent, to provide both parties an opportunity to review the new document and attempt to resolve the matter. The parties did not achieve a resolution.

The hearing was, therefore, reconvened on September 12, 2013, with Dr. Jeffrey P. Smith, M.D., as the presiding member of the Board Panel.[4]

Throughout the proceedings, Senior Assistant Attorney General Maureen Zaniel represented the Government, and Respondent appeared *pro se.*

Board member Marc Rankin, M.D., did not participate in the deliberation of this matter, as he has recused himself for the following reasons. Before the recommended decision was issued, Respondent contacted Dr. Rankin through an intermediary, Dr. James Cobey. Dr. Cobey had *ex parte* communications with Dr. Rankin attempting to obtain information regarding the Board Panel and the Board's decisions regarding Respondent. Dr. Rankin referred Dr. Cobey to Board counsel, who requested Dr. Cobey to refrain from contacting Board members regarding confidential matters regarding a licensee. Dr. Cobey continued to contact Dr. Rankin and continued to seek information on Respondent's behalf, despite the fact that Dr. Cobey is not an

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[4]Respondent complains in his exceptions that he was prejudiced by the distance of time between the first hearing date and the second hearing date. First, Respondent has demonstrated no prejudice, other than to make this bald assertion. Second, Respondent was, in fact, benefited by the alleged delay. Respondent remained actively licensed and continued to practice medicine without encumbrance during the nine-month interim between the December, 2012 and September, 2013 hearings. Indeed, since the September, 2013 hearing, Respondent has continued to practice medicine with an unencumbered medical license. Therefore, Respondent has suffered no prejudice. Accordingly, Respondent's exception in this regard is rejected.

attorney authorized to practice law in the District of Columbia. Because of this continued contact and attempted *ex parte* communication from Dr. Cobey, Dr. Rankin has, therefore, recused himself from any of the deliberations in this matter.

Evidence

At the hearing, the Government introduced the following exhibits into evidence without objection from Respondent:

Government's Exhibit 1: State of Nevada Board of Medical Examiners: Findings of Fact, Conclusions of Law, and Order, issued December 19, 2001. The exhibit was marked and admitted into evidence. (Tr. 12/19/12 P. 19, L. 9-12).

Government's Exhibit 2: Medical Board of California, Department of Consumer Affairs Decision in the matter of the Seventh Amended Statement of Issues Against George Stephen Lakner, issued May 31, 2007. The exhibit was marked and admitted into evidence. (Tr. 12/19/12 P. 19, L. 9-12).

Government's Exhibit 3: Maryland State Board of Physicians, Final Decision and Order After Remand, issued March 19, 2008. The exhibit was marked and admitted into evidence. (Tr. 12/19/12 P. 21, L. 6-9).

Government's Exhibit 4: Illinois Department of Financial and Professional Regulation: order Denying Motion for Rehearing, issued August 17, 2009; Findings of Fact, Conclusions of Law, and Recommendation to the Director, issued June 3, 2009; and Administrative Law Judge's Report and Recommendation, issued April 30, 2009. The exhibit was marked and admitted into evidence. (Tr. 12/19/12 P. 22, L. 20-22; P. 23, L. 1).

Government's Exhibit 5: Lakner, George - One-Time Query Response from the National Practitioner DataBank, processed December 19, 2012. The exhibit was marked and admitted into evidence. (Tr. 9/12/13 P. 10, L. 6-8, 15-17).

Government's Exhibit 6: Maryland State Board of Physicians Final Decision and Order, issued August 29, 2005. The exhibit was marked and admitted into evidence. (Tr. 9/12/13 P. 74, L. 10-11; P. 76, L. 1-4).

Government's Exhibit 7: Superior Court of California, County of San Francisco, Register of Actions, printed September 11, 2013. The exhibit was marked and admitted into evidence. (Tr. 9/12/13 P.88, L. 19-21).

Respondent introduced the following evidence without objection from the Government:

Respondent's Exhibit 1: National Practitioner DataBank report # 5500000069680165, Nevada State Board of Medical Examiners License Restored or Reinstated, Complete, process date July 26, 2011. The exhibit was marked and admitted into evidence. (Tr. 12/19/12 P.26, L. 21-22; P. 27, L. 1-2).

Respondent's Exhibit 3: Respondent's Response to Amended Notice of Intent to Take Disciplinary Action, dated July 5, 2012. The exhibit was marked and admitted into evidence. (Tr. 9/12/13 P.18, L. 14-16).

Respondent's Exhibit 11: Letter from Gail. M. Heppell to Timothy J. Aspinwall, Re: In the Matter of the Statement of Issues Against: George S. Lakner, M.D., dated February 8, 2002. The exhibit was marked and admitted into evidence. (Tr. 9/12/13 P.48, L. 10-13).

Respondent's Exhibit 13: Superior Court of California, County of San Francisco, Order Overruling Demurrer, issued June 21, 2013. The exhibit was marked and admitted into evidence. (Tr. 9/12/13 P.55, L. 1-5).

Respondent's Exhibit 14: Superior Court of California docket printout. The exhibit was marked and admitted into evidence. (Tr. 9/12/13 P.55, L. 1-5).

Respondent's Exhibit 16: National Practitioner DataBank Void Report Confirmation for report # 5500000064109021, process date August 30, 2010. The exhibit was marked and admitted into evidence. (Tr. 9/12/13 P.64, L. 3-6).

Respondent's Exhibit 17: Letter from Jay Stewart to George Lakner, dated March 18, 2013. The exhibit was marked and admitted into evidence. (Tr. 9/12/13 P.64, L. 3-6).

Respondent's Exhibit 18[5]: Letter from Gary M. Gilbert to Leslie M. Burger, Re: George S. Lakner, M.D., dated August 31, 2011. The exhibit was marked and admitted into evidence. (Tr. 9/12/13 P.81, L. 2-5).

Respondent offered the following exhibits into evidence, to which Government's objections were sustained and, therefore, the Board Panel did not receive them into evidence: Respondent's Exhibit #4 – Foreign-language periodical article written by Respondent; Respondent's Exhibit #5 – Letter from Barry J, Gurland, M.D. to Bruce T. Taylor, M.D., dated January 7, 1991; Respondent's Exhibit #6 – Letter from Bob Jackson to Dr. William Prescott, dated February 2, 1987; Respondent's Exhibit #7 – Letter from D.F. Hagen to Lt. General James E. Thompson, dated May 15; Respondent's Exhibit #8 – E-mail from Wanda Wallis to John Puente, dated May 15, 2000; Respondent's Exhibit #9 – Written Affidavit from Martha G. Smith, dated March 12, 2001; Respondent's Exhibit #10 – E-mail from Dave Thornton to

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[5] Respondent's Exhibit 2 was marked for identification (Tr. 12/19/12 P. 28, L.20-22). However it was never received into evidence during the portion of the hearing that was held on December 19, 2012. The same document was marked as Respondent's Exhibit 18 during the September 12, 2013 hearing and introduced into evidence under that exhibit number.

Wanda Wallis, dated December 7, 2000; and Respondent's Exhibit #12 – Letter from David A. Rubenstein to Ms. Melissa Meith, dated January 17, 2003.

Counsel for the Government called as a witness, Lisa Robinson, Health Licensing Specialist for the District of Columbia Board of Medicine. Respondent called no witnesses.

Applicable Law

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).

The Board is authorized under the HORA to take reciprocal action when a licensee has been disciplined by a licensing authority of another jurisdiction for conduct that would be grounds for Board action in its jurisdiction. D.C. Official Code § 3-1205.14(a)(3) (2013). The HORA provides, in pertinent part,

> Each board, subject to the right of a hearing as provided by this subchapter, on an affirmative vote of a quorum of its appointed members may take one or more of the disciplinary actions [...] against any person permitted by this subchapter to practice a health occupation regulated by the board in the District who:
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> (1) Fraudulently or deceptively obtains or attempts to obtain a license, registration, or certification for himself, herself, or another person;

(3) Is disciplined by a licensing or disciplinary authority [...] of any jurisdiction for conduct that would be grounds for disciplinary action under this section;

(8) Willfully makes or files a false report or record in the practice of a health occupation; and

(24) Violates any provision of this chapter or rules and regulations issued pursuant to this chapter.

D.C. Official Code § 3-1205.14(a).

Also, with respect to the charges in the Notice, D.C. Official Code § 3-1210.04 (Filing false document or evidence; false statements) states:

(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; and

(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.

Findings of Fact

The Board adopts the Board Panel's findings of fact based on the preponderance of the evidence, and as supported by the record:

1. At all times relevant, Respondent has held a license to practice medicine in the District of Columbia. (Tr. 12/19/12 P. 47, L. 2-3).

2. On March 18, 1999, Respondent applied for a new medical license in California. (Gov. Ex. 2).

3. On July 19, 2000, the Division of Licensing for the Medical Board of California (the "California Division of Licensing") denied Respondent's medical license application. (Gov. Ex. 2).

4. The California Division of Licensing cited its reasons for denying Respondent's application for licensure as "Respondent's dishonesty in altering the Returned Original form [to indicate that he had submitted an original medical school diploma with his application] and his dishonesty in filling certain employment applications." (Gov. Ex. 2, P. 6).

5. The California Division of Licensing sent "referrals" to the licensing boards of other jurisdictions, including Nevada and Maryland, notifying them of Respondent's denial of licensure in California. (Resp. Ex. 3).

6. On March 28, 2001, Respondent applied to renew his medical license in Nevada. (Gov. Ex. 1).

7. When Respondent attempted to renew his Nevada license, Respondent answered "NO" to Question #7 which asked "Have you ever been denied a license, permission to practice medicine, or any other healing art, or permission to take an examination to practice medicine or another healing art in any state, country or U.S. territory." (Gov. Ex. 1).

8. On December 19, 2001, the Nevada Board of Medical Examiners (the "Nevada Board") revoked Respondent's medical license because he attempted to renew a license to practice medicine by fraud or misrepresentation or by false, misleading, inaccurate, or incomplete statement and engaging in conduct intended to deceive when he answered "NO" to Question #7 on the renewal application, while he was aware that California had denied him a license to practice medicine. (Gov. Ex. 1).

9. On May 31, 2007, the California Division of Licensing adopted the April 20, 2007 recommended order of a California administrative law judge to deny Respondent's application for licensure for, among others, a ninth cause because the United States Army

revoked Respondent's privileges to practice for falsifying a letter of recommendation from a peer physician and coercing an enlisted soldier to write a letter of recommendation. (Gov. Ex. 2).

10. On March 19, 2008, the Maryland State Board of Physicians (the "Maryland Board") imposed a fine of ten thousand dollars ($10,000.00) and suspended Respondent's license to practice medicine in Maryland for three (3) years[6] because it found that Respondent fraudulently or deceptively obtained or attempted to obtain a license, engaged in unprofessional conduct in the practice of medicine, willfully made or filed a false report in the practice of medicine, willfully made a false representation when seeking or making an application for licensure or any other application related to the practice of medicine, and was disciplined by a licensing authority of another state for an act which would be grounds for discipline in Maryland. (Gov. Ex. 3).

11. On June 3, 2009, the Illinois Department of Financial and Professional Regulation adopted the recommended order of an Illinois administrative law judge to fine the Respondent five thousand dollars ($5,000.00) and indefinitely suspend Respondent's medical license in Illinois because the administrative law judge found Respondent was subject to disciplinary actions of other states or jurisdictions, including Maryland, New Jersey, California, New York, and the Army. (Gov. Ex. 4).

12. Respondent testified during the hearing that the suspension of his license in Illinois was reversed because the original action should never have been taken. (Tr. 9/12/13 P. 60, L. 18-21).

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[6] The Maryland Board's suspension was retroactively effective, beginning on the date of the Maryland Board's Original Final Decision and Order of August 29, 2005.

13. By process date August 30, 2010, the National Practitioner DataBank reported that the disciplinary action report #5500000064109021 on Respondent, submitted by the Illinois Department of Financial and Professional Regulation, had been voided upon the grounds that the disciplinary action taken by Illinois was rescinded "because the original action should never have been taken (e.g., overturned on appeal)." (Resp. Ex. 16; Gov. Ex. 5, P. 4).

14. Respondent currently holds an active license in Illinois. (Resp. Ex. 17).

15. On June 10, 2011, the Nevada Board issued an order to restore Respondent's license to active status upon finding that the Nevada Board did not have information that after a hearing in June 2001, a California judge found the California Division of Licensing's allegations against Respondent unsustainable, entering the California Division of Licensing into a stipulation to grant Respondent a full and unrestricted license. (Gov. Ex. 5; Resp. Ex. 1).

16. The Government dismissed Charge 4 of the Notice in view of the evidence Respondent presented at the hearing with regard to the rescission of the original action in Nevada. (Tr. 9/12/13 P. 9, L. 3-9).

Conclusions of Law

Based upon the foregoing, and in consideration of the entire record, the Board agrees with the Board Panel and concludes that action may be taken against Respondent's license, because his medical license was denied in California and suspended in Maryland. The Board has jurisdiction to take action based on the actions taken by California and Maryland. D.C. Official Code §3-1205.14(a)(3). The HORA 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: (3) Is disciplined by a licensing or disciplinary authority or convicted or disciplined by a court of any jurisdiction for conduct that would be grounds for disciplinary action under this section;

(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 § 3-1205.14. The Government bears the burden of proof by a preponderance of evidence that the proposed action should be taken. 17 DCMR § 4115.1.

The Maryland and California Disciplinary Actions

Charge 2 of the Notice charged Respondent for being disciplined by a licensing or disciplinary authority for conduct that would be grounds for disciplinary action under D.C. Official Code § 3-1205.14. On March 19, 2008, the Maryland Board imposed a fine of ten thousand dollars ($10,000.00) and suspended Respondent's license to practice medicine in Maryland for three (3) years, having found that Respondent fraudulently or deceptively obtained or attempted to obtain a license, engaged in unprofessional conduct in the practice of medicine, willfully made or filed a false report in the practice of medicine, willfully made a false representation when seeking or making an application for licensure or any other application related to the practice of medicine, and was disciplined by a licensing authority of another state for an act which would be grounds for discipline in Maryland. (Gov. Ex. 3). Respondent's conduct, therefore, is grounds for disciplinary action under D.C. Official Code §§ 3-1205.14(a)(1), (26), (8), § 3-1210.04, and § 3-1205.14(a)(3), respectively. The Board, therefore, has a basis in law and fact to conclude that the conduct alleged in Charge 2 of the Notice warrants reciprocal action.

Charge 3 of the Notice also charged Respondent for being disciplined by a licensing or disciplinary authority for conduct that would be grounds for disciplinary action under D.C. Official Code § 3-1205.14. On July 19, 2000, the California Division of Licensing denied Respondent's medical license application because of "Respondent's dishonesty in altering the Returned Original form [to indicate that he had submitted an original medical school diploma with his application] and his dishonesty in filling certain employment applications." (Gov. Ex. 2, P. 6). On May 31, 2007, the California Division of Licensing adopted the April 20, 2007 recommended order of a California administrative law judge to deny Respondent's application

for licensure as a result of disciplinary action taken by the United States Army to revoke Respondent's privileges to practice for falsifying a letter of recommendation from a peer physician and coercing an enlisted soldier to write a letter of recommendation. (Gov. Ex. 2). Respondent's conduct, in both cases, is grounds for disciplinary action under D.C. Official Code § 3-1210.04(a).

The disciplinary actions taken by the Maryland Board and the California Division of Licensing prove by a preponderance of evidence that Respondent was disciplined by a licensing or disciplinary authority for conduct that would be grounds for disciplinary action under D.C. Official Code § 3-1205.14(a)(3). Respondent's evidence did not overcome the evidence sufficiently enough to rebut the Government's evidence. The majority of Respondent's evidence strove to re-litigate his matter with the California Division of Licensing, rather than to address the existence of disciplinary actions brought in other jurisdictions against his license, as charged by the Notice and demonstrated by the Government. Respondent's evidence regarding Charges 2 and 3 was not persuasive to this Board because it was not responsive to the charges proffered against him.

To prove a charge under D.C. Official Code § 3-1205.14(a)(3), the Government does not need to re-litigate the merits of a prior case for which a licensee has received disciplinary action; rather, proving the fact that a licensee was disciplined by another jurisdiction for conduct actionable in the District, alone, is sufficient. *Faulkenstein v. District of Columbia Bd. Of Med.*, 727 A.2d 302, 307 (DC App.1999) ("by the statutory terms, the fact alone of discipline by another licensing authority allows 'reciprocal' discipline in the District if the conduct would be grounds for discipline here.").

Moreover, as the Board Panel concluded, even if the California action were allowed to be re-litigated, and had Respondent prevailed, the Maryland action, by itself, is sufficient to sustain the Board Panel's recommended sanction.

Reciprocal Action Is Not Warranted for the Actions Taken in Nevada and Illinois

The Notice alleged a basis for disciplinary action taken by the licensing authority of Nevada to revoke Respondent's license; however, Respondent provided testimony and evidence sufficient to prove that the state of Nevada rescinded its action to revoke his license. A report from the National Practitioner DataBank corroborated Respondent's testimony, stating "LICENSE RESTORED OR REINSTATED, COMPLETE" on its face. The report described that the Nevada Board, during its hearing of the Respondent's matter, did not have information that a California judge found California's allegations against Respondent unsustainable during a hearing in 2001, and entered the California Division of Licensing into a stipulation to grant Respondent a full and unrestricted license. The 2001 California court's action should have been exculpatory evidence available during the Respondent's hearing. Because that exculpatory evidence was not made available to the Nevada Board, the Nevada Board rescinded its revocation action and restored Respondent's license fully. As a result of this evidence, the Government dismissed Charge 4 of the Notice. The Board Panel, therefore, found an insufficient basis in fact or law to take reciprocal action against Respondent upon the grounds of Charge 4. The Board adopts the Board Panel's conclusion in this regard.

Likewise, the Board Panel found that Respondent sufficiently rebutted Charge 1 of the Notice, as well. Charge 1 alleged that Respondent's license was suspended by the Illinois Department of Financial and Professional Regulation. A "Void Report Confirmation" from the National Practitioner DataBank confirms that the original suspension action by Illinois was

voided "because the original action should have never been taken (e.g., overturned on appeal)." (Resp. Ex. 16). Illinois has since restored Respondent's license to active status. (Resp. Ex. 16; Resp. Ex. 17; Gov. Ex. 5, P. 4). Therefore, the Board Panel found an insufficient basis in fact or law to take reciprocal action against Respondent in this instance, where the jurisdiction that initiated the disciplinary action has since rescinded that action because the original action should have never been taken. The Board adopts the Board Panel's finding in this regard.

Accordingly, the Board adopts the Board Panel's conclusion that the Government sustained its allegations in Charges 2 and 3 of the Notice, and provides the Board with a basis in law and fact to warrant reciprocal action. Therefore, the Board concludes that Respondent has violated the HORA and is subject to disciplinary thereunder. The Board finds insufficient basis to warrant reciprocal action against Respondent for Charges 1 and 4 of the Notice.

Respondent's Exceptions

Respondent posits various grounds to support his exceptions. Many of Respondent's exceptions are either unsupported assertions or are based on evidence excluded from the hearing record. In that regard, Respondent continues to attempt to re-litigate the underlying disciplinary actions from California and Maryland. Under *Faulkenstein,* the Board may not delve into the underlying facts, nor should it. Under the HORA, "the fact alone of discipline by another licensing authority allows 'reciprocal' discipline in the District if the conduct would be grounds for discipline here." *Faulkenstein*, 727 A.2d at 307. Here, the California licensing authority found that Respondent filed false information regarding his credentials in his initial license application. It is a violation of the HORA to fraudulently or deceptively obtain or attempt to obtain a license under D.C. Official Code § 3-1205.14(a)(1). Therefore, the fact of the denial of

licensure by the California licensing authority alone is sufficient to warrant reciprocal discipline in this case.

The Maryland Board of Physicians disciplined Respondent for fraudulently or deceptively obtaining or attempting to obtain a license under Maryland law, as well as making false reports in the practice of medicine and making false representations when seeking licensure related to the practice of medicine, and for being disciplined by the licensing authority of another state for conduct that would be grounds for discipline in Maryland. After a tortuous procedural history, the Maryland Board, in its Final Decision and Order After Remand, stated,

> The Board notes again that Dr. Lakner has a long history of making false and deceptive statements on applications for employment and licensure. He has not accepted responsibility for this conduct; instead, he has consistently blamed others. His actions were intentionally dishonest.

Government Ex. 3, at 3. The Maryland Board's recognition of Respondent's inability to accept responsibility for his conduct is emblematic of the exceptions he has filed with this Board.

Throughout the exceptions, Respondent asserts an alleged lack of due process, delay by the Board in concluding this matter, impropriety by Board counsel, while maintaining righteousness in the face of evidence to the contrary. Indeed, Respondent maintained a strikingly similar posture with the New York Supreme Court, Appellate Division, Third Department. *Lakner v. New York State Dept. of Health*, 72 A.D.3d 1225, 898 N.Y.S.2d 709 (2010). There, Respondent appealed the revocation of his medical license by the New York Department of Health. Noting, as does this Board. that "the circumstances which led to the out-of-state determinations of misconduct may not be relitigated in an expedited hearing held in a referral proceeding where 'a physician received notice of the out-of-state charges and a determination was rendered in that state on the merits after a full evidentiary hearing[,]" the New

York Supreme Court concluded that the evidence introduced to relitigate the underlying facts of the out-of-state proceeding was properly excluded. Moreover, the New York Supreme Court took the extraordinary step to point out that the New York Administrative Review Board "took into account the fact that [Respondent] was found not to be credible by both the medical boards of Nevada and Maryland and has never accepted responsibility for the misstatements made during these proceedings or the misrepresentations contained in his employment applications." *Lakner*, 72 A.D.3d at 1228, 898 N.Y.S.2d at 712. Thus, that court affirmed the revocation of Respondent's license in New York.

Respondent's refusal to accept responsibility for his past conduct is recorded in the annals of federal case law, as well. For example, Respondent challenged the termination of his employment with the University of Connecticut Health Center (UCHC) in *Lakner v. Lantz*, 547 Fed.Appx. 13 (2dCir.2013). Respondent was employed as a Principal Psychiatrist with UCHC, which was contracted to provide treatment to prison inmates at the Connecticut Department of Corrections' (DOC) York Correctional Institution. In *dicta*, the Second Circuit noted that Respondent "had been fired by DOC for bringing alcohol onto prison ground in violation of his contract and DOC regulations." *Id.*, n. 4. Still, Respondent asserted a righteousness that demonstrated a refusal to accept responsibility for his conduct in that case.

Respondent's proclivity for dishonesty was again exemplified when he challenged the United States Department of Defense and the U.S. Army Medical Command's revocation of his clinical privileges as an Army physician in *Lakner v. U.S. Dept. of Defense*, 755 F.Supp.2d 132 (D.D.C. 2010). There, the Army Medical Command convened a Credentialing Committee to review Respondent's medical credentials following his tour of duty, and examined whether certain reference letters written in support of Respondent were, in fact, written by the signatories

of those letters. After further investigation, the Committee recommended revoking Respondent's clinical privileges with the Army Medical Command. *Id.,* at 134. Again, Respondent demonstrated both a failure to accept responsibility for, as well as dishonesty in (as found by the Army Medical Command Credentialing Committee), his conduct.

Respondent's assertions to this Board with respect to the process it now follows in arriving at this Final Decision are much like the refrain he has asserted in all of the aforementioned cases. What Respondent refuses to accept is the *fact* of the disciplinary action by both the California and Maryland licensing authorities. Attacking the integrity of the process, the integrity of the Board, its members and staff achieve nothing. Indeed, personal attacks against the Board and its staff warrant no attention, inasmuch as they are irrelevant to the resolution of the merits of this matter.

Simply stated, that Respondent was disciplined by the licensing authorities of Maryland California provides ample evidence to sustain the Board Panel's recommendation. *See Faulkenstein, supra.*

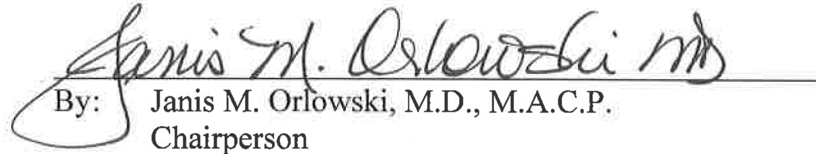
ORDER

ACCORDINGLY, UPON CONSIDERATION of the evidence and testimony presented at the hearings in this matter on December 19, 2012 and September 12, 2013, and the entire record herein, it is by the District of Columbia Board of Medicine,

ORDERED that the medical license of George S. Lakner, M.D., (License No. MD 2321) shall be and is hereby - **REPRIMANDED**.

DISTRICT OF COLUMBIA BOARD OF MEDICINE

8.28.14
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.

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