GOVERNMENT OF THE DISTRICT OF COLUMBIA
BOARD OF MEDICINE

Re: In the Matter of	:	
Oparaugo Udebiuwa, M.D.	:	**Docket No. 98-005-3**
Respondent	:	

ORDER

This matter came before the District of Columbia Board of Medicine (the "Board") pursuant to D.C. Code § 2-3305.14 (1999 Supp.) and § 2-3310.9 (1994 Supp.) otherwise known as the Health Occupations Revision Act ("HORA"). The "HORA" provides that civil fines, penalties, and fees may be imposed by the Board for any infraction of laws or regulations pertaining to the practice of medicine.

Background

On May 6, 1998 the District of Columbia Board of Medicine informed Dr. Oparaugo Udebiuwa through a "Notice of Intent to Take Disciplinary Action" that the Board proposed to take action against Respondent or the Respondent's license to practice medicine in the District of Columbia. The Notice was based upon allegations that Dr. Udebiuwa had:

> failed to conform to standards of acceptable conduct and prevailing practice within the medical profession, for which the Board may take the proposed action pursuant to D.C. Code, section 2-3305.14(a)(26)(1994); and,

demonstrated a willful or careless disregard for the health, welfare, or safety of a patient, for which the Board may take the proposed action pursuant to D.C. Code, section 2-3305.14(a)(28)(1994).

On May 18, 2001, Chief Administrative Law Judge, E. Savannah Little issued a Proposed Findings of Fact, Proposed Conclusions of Law and Proposed Disciplinary Action.

The **"Proposed Findings of Facts"** provided in pertinent part that:

1. Oparaugo Udebiuaw, M.D. is a medical doctor, licensed to practice in the District of Columbia under license no. 20259.

2. On August 13, 1992, Sonya Hill filed a civil action in the District of Columbia Superior Court against Dr. Udebiuwa and Howard University Hospital wherein she alleged that the defendant negligently became involved in a social and sexual relationship with her while she was a psychiatric patient of his. Plaintiff alleged that Dr. Udebiuwa actions violated the standards of medical care and ethics and breached his responsibilities to her.

3. On March 9, 1995 a jury returned a verdict against Dr. Udebiuwa and Howard University Hospital wherein it found that Ms. Hill had proven by a preponderance of evidence that Dr. Udebiuwa committed medical malpractice and this action proximately caused the plaintiff's injuries.

4. On March 22, 1995, judgment was entered against the defendants.

5. On August 23, 1995, the parties entered into a settlement agreement in which the plaintiff received $1.5 million.

In the **"Proposed Conclusions of Law"** Judge Little found [in relevant part] that:

1. The government had the burden of proving by a preponderance of evidence that respondent committed the acts alleged in Charges 1 and 2.

2. The burden of proof on the plaintiff in *Hill v. Udebiuwa* was the same as the burden on the government herein, by a

preponderance of the evidence.

3. The tribunal took judicial notice of the jury verdict in *Hill v. Udebiuwa,* and in the absence of credible evidence to impeach the jury's finding, the government met its burden of proving that respondent committed the violations alleged in Charges 1 and 2.

After hearing testimony as to the character of Dr. Udebiuwa, Judge Little recommended that the following **"Proposed Disciplinary Action"** be taken against Dr. Udebiuwa:

(1) Respondent be reprimanded for failing to conform to standards of acceptable conduct and prevailing practice within the medical profession in his care of Sonya Hill;

(2) Respondent pay the maximum fine of $5,000 for violation of D.C. Code § 2-3305.14(a)(26);

(3) Respondent pay the maximum fine of $5,000 for violation of D.C. Code §2-3305.14(a)(28).

(4) Respondent be placed on probation for a period of three years and comply with any proposed plan of treatment developed by the Board. Should respondent fail to comply with the terms of his treatment or violate D.C. Code § 2-3305.14(a) during the probationary period, respondent will be ordered to show cause as to why his license should not be suspended or revoked.

On June 1, 2001, exceptions by respondent's counsel, John T. Riely, to Judge Little's decision were received by the Board of Medicine.

The D.C. Board of Medicine, after reviewing the "Proposed Findings of Fact", "Proposed Conclusions of Law", and Proposed Disciplinary Action", and considering the exceptions by respondent's counsel, hereby accepts the recommended decision of Judge Little in whole.

ORDER

Based on the foregoing, it is hereby **ORDERED** that:

(1) Respondent is reprimanded for failing to conform to standards of acceptable conduct and prevailing practice within the medical profession in his care of Sonya Hill and,

(2) Respondent shall pay $5,000 for his violation of D.C. Code § 2-3305.14(a)(26) in his care of Sonya Hill and,

(3) Respondent shall pay $5,000 for his violation of D.C. Code § 2-3305.14(a)(28) in his care of Sonya Hill and,

(4) Respondent shall be placed on three years probation and shall comply with any plan of treatment prescribed by the Board of Medicine. Should respondent failed to comply with the terms of his treatment and/or violate D.C. Code § 2-3305.14(a) within the probationary period, respondent will be ordered to show cause why his license to practice medicine should not be suspended or revoked.

7-26-01
Date

William E. Matory M.D.
Chairperson,
Board of Medicine

JUDICIAL AND ADMINISTRATIVE REVIEW OF ACTIONS OF BOARD.

D.C. Code § 3-1205.20 (2001 Ed.) provides:

> "Any person aggrieved by a final decision of a board of the Mayor may appeal the decision to the District of Columbia Court of Appeals pursuant to § 2-510."

Notice: This opinion is subject to formal revision before publication in the Atlantic and Maryland Reporters. Users are requested to notify the Clerk of the Court of any formal errors so that corrections may be made before the bound volumes go to press.

DISTRICT OF COLUMBIA COURT OF APPEALS

No. 01-AA-1134

OPARAUGO UDEBIUWA,
PETITIONER,

v.

DISTRICT OF COLUMBIA
BOARD OF MEDICINE,
RESPONDENT.

Petition for Review of a Decision of the
District of Columbia Board of Medicine
(Dkt. No. 98-005-3)

(Argued February 20, 2003 Decided March 13, 2003)

John T. Riely for petitioner.

William J. Earl, Assistant Corporation Counsel, with whom *Arabella W. Teal*, Interim Corporation Counsel, and *Charles L. Reischel*, Deputy Corporation Counsel, were on the brief, for respondent.

Before TERRY, SCHWELB and GLICKMAN, *Associate Judges*.

Opinion for the court by *Associate Judge* GLICKMAN.

Concurring opinion by *Associate Judge* SCHWELB at page 7.

GLICKMAN, *Associate Judge*: Dr. Oparaugo Udebiuwa appeals from the decision of the D.C. Board of Medicine to discipline him for engaging in an inappropriate social and sexual relationship with a former psychiatric patient. *See* D.C. Code § 3-1205.14 (a)(26) & (28) (2001). The Board

found that this misconduct was established conclusively by the $2.3 million judgment that had been rendered against Dr. Udebiuwa and Howard University Hospital (HUH) in the patient's malpractice action in D.C. Superior Court. Dr. Udebiuwa's principal contention is that the Board of Medicine erred in according preclusive effect to the malpractice judgment because the parties subsequently settled the case for $1.5 million and sought to have the judgment vacated. This contention fails for the simple reason that, notwithstanding the parties' intentions, the judgment was not vacated. We affirm the Board's order.

The post-trial settlement of the malpractice action mooted the litigation. For that reason the settlement required the dismissal of the pending appeal. *See Milar Elevator Co. v. District of Columbia Dep't of Employment Servs.*, 704 A.2d 291, 292-93 (D.C. 1997). But though the settlement satisfied the judgment against Dr. Udebiuwa and (HUH), it did not eliminate that judgment. The parties apparently sought a vacatur by filing a praecipe in the trial court which stated that "[a]s a part of the settlement agreement and release, the parties agree that the judgment entered against [(HUH) and Dr. Udebiuwa] is to be vacated." "We ask for this," stated the attorney signatories to the praecipe. They asked for it, but they did not get it. The trial court, which took no action at all in response to the praecipe, did not grant the vacatur. Thereafter the parties did nothing further. They did not move in the trial court to vacate the judgment pursuant to Super. Ct. Civ. R. 60 (b)(5), which permits motions for relief from a final judgment on the ground that the judgment has been satisfied, released or discharged.[1] But even if the praecipe is deemed equivalent to a Rule 60 (b) motion, the mere filing of a motion under subdivision (b) "does not affect the finality of a

[1] Nor did the parties seek equivalent relief in this court while the appeal was still pending.

judgment or suspend its operation." Super. Ct. Civ. R. 60 (b).

Nor, it should be clear, did their settlement entitle the parties to have the trial court vacate the judgment upon their request.[2] The general rule is to the contrary. Although this court has not spoken on the issue before now, the Supreme Court has held that "mootness by reason of settlement does not justify vacatur of a judgment," even if the settlement agreement specifically provides for vacatur as a condition of the deal. *U.S. Bancorp Mortgage Co. v. Bonner Mall P'ship*, 513 U.S. 18, 29 (1994). Vacatur, the Court said, is an extraordinary remedy that is reserved for exceptional situations, as where the losing party is frustrated from obtaining appellate review because the judgment is rendered moot by circumstances beyond that party's control. "Where mootness results from settlement, however, the losing party has voluntarily forfeited his legal remedy by the ordinary processes of appeal or certiorari, thereby surrendering his claim to the equitable remedy of vacatur." *Id.* at 25. In such a case, the equities ordinarily disfavor vacatur even if the losing party bargained for it, because the public interest typically outweighs the private interests involved. "Judicial precedents are presumptively correct and valuable to the legal community as a whole. They are not merely the property of private litigants and should stand unless a court concludes that the public interest would be served by a vacatur." *Id.* at 26 (quoting *Izumi Seimitsu Kogyo Kabushiki Kaisha v. U.S. Philips Corp.*, 510 U.S. 27, 40 (1993) (Stevens, J., dissenting)). The public interest also is

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[2] In view of Dr. Udebluwa's argument in his brief that the parties to the malpractice action had a legal right to vacate the judgment, and that they effectively exercised that right by filing a praecipe which the trial court did not disturb and which therefore "remains the law of the case," we do not agree with our concurring colleague's view that the balance of our discussion of the vacatur issue in this opinion is "purely advisory and not necessary to the court's holding." *Post* at 9.

served by encouraging parties to settle before rather than after trial, by deterring those litigants who "may think it worthwhile to roll the dice rather than settle in the [trial] court . . . if, but only if, an unfavorable outcome can be washed away by a settlement-related vacatur." *Bonner Mall*, 513 U.S. at 28.

As is illustrated by the present case, one important reason that the judgment of a court is "valuable to the legal community as a whole," *id.* at 26, is that it may have "preclusive benefits for third parties" under the doctrine of offensive nonmutual collateral estoppel. *In re Mem'l Hosp. of Iowa County, Inc.*, 862 F.2d 1299, 1302 (7th Cir. 1988). "If parties want to avoid stare decisis and preclusive effects, they need only settle before the [trial] court renders a decision." *Id.* We appreciate that the recipient of an otherwise satisfactory post-trial settlement offer that is conditioned on vacating the judgment may be quite amenable to that condition, and will feel aggrieved if a desirable settlement is stymied by the rule against routine grants of vacatur in such circumstances. "The interests of litigants in general, however, lie with the orderly operation of a system of justice, one in which the conclusions of litigation are recorded and thus preserved for the future, one in which slightly higher costs in today's case may reduce the trouble encountered by litigants and judges tomorrow. Judges must have at heart the interests of other litigants in future cases, and hold them equal in weight with the interests of today's." *Id.* at 1303; *see also Bonner Mall*, 513 U.S. at 27 ("To allow a party who steps off the statutory path [of seeking appellate relief from an adverse judgment] to employ the secondary remedy of vacatur as a refined form of collateral attack on the judgment would – quite apart from any considerations of fairness to the parties – disturb the orderly operation of the federal judicial system.").

While "exceptional circumstances may conceivably counsel" granting a motion for vacatur at the behest of settling parties, *Bonner Mall*, 513 U.S. at 29, no such circumstances were presented in the case at bar. The fact that Dr. Udebiuwa wanted the judgment vacated to avoid its collateral estoppel use against him in a disciplinary proceeding was a reason to deny vacatur, not to grant it. Simply put, Dr. Udebiuwa was not entitled to vacatur, and there was no injustice in the Board's refusal to honor his expectation that the Superior Court would give it to him.

Apart from his contention that the judgment in the malpractice action should have been treated as vacated, which we have rejected, Dr. Udebiuwa advances no argument that the Board of Medicine abused its discretion by using that judgment in accordance with the doctrine of offensive nonmutual collateral estoppel to establish the fact that he had an inappropriate relationship with a patient. It is undisputed that the issue in question was "actually litigated" in the malpractice action, was "determined by a valid and final judgment" in that action, and was "essential to th[at] judgment." *Ali Baba Co. v. Wilco, Inc.*, 482 A.2d 418, 421 (D.C. 1984). The other conditions for the offensive use of collateral estoppel, which the Supreme Court articulated in *Parklane Hosiery Co. v. Shore*, 439 U.S. 322, 331-32 (1979), and which this court adopted in *Ali Baba*, 482 A.2d at 422, also were met. Specifically, the Board of Medicine could not have participated in the malpractice action; Dr. Udebiuwa had ample incentive in that action to litigate fully the issue of his relationship with his patient; no judgments existed that were inconsistent with the judgment in the malpractice action; and Dr. Udebiuwa had no procedural opportunities available to him only in the disciplinary proceeding

that he might have used to achieve a more favorable resolution of the issue of his misconduct with a patient. The Board therefore did not abuse its discretion by giving preclusive effect to the malpractice judgment on that issue.

Dr. Udebiuwa also complains about the delays he encountered in the administrative proceeding. Under D.C. Code § 3-1205.19 (h) (2001), the Board of Medicine was supposed to issue a final decision in writing within ninety days of conducting a hearing. Applicable regulations prescribed tighter deadlines. *See* 17 DCMR §§ 4114.3 (administrative law judge to submit a recommended decision to the Board within thirty days of the hearing) and 4117.1 (Board to issue decision within sixty days of the hearing). These deadlines were not met in Dr. Udebiuwa's case; for example, the Board did not issue its decision until eleven months after the hearing concluded. Nonetheless, the delays do not entitle Dr. Udebiuwa to relief because they did not prejudice him. *See Wisconsin Ave. Nursing Home v. District of Columbia Comm'n on Human Rights*, 527 A.2d 282, 285 (D.C. 1987) (stating that in cases of extreme administrative delay, a proceeding may be dismissed if the delay causes a party "substantial prejudice"). While delays in contravention of the statutory mandate are regrettable, the deadlines are "more in the nature of a precatory directive than a jurisdictional prerogative," particularly in light of the "governmental interests at stake" in professional disciplinary proceedings. *Mannan v. District of Columbia Bd. of Med.*, 558 A.2d 329, 334 (D.C. 1989); *see also Salama v. District of Columbia Bd. of Med.*, 578 A.2d 693, 695 n.1 (D.C. 1990). The preferred remedy for administrative delay is an order compelling agency action, not a reversal of the eventual agency decision. *See* D.C. Code § 2-510 (a)(2); *see also Nelson v. District of Columbia*, 772 A.2d 1154, 1156 (D.C. 2001); *Harris v. District of Columbia Rental Hous. Comm'n*,

505 A.2d 66, 71 (D.C. 1986).

Dr. Udebiuwa's remaining two contentions on appeal require no extended discussion. First, the Executive Director of the Office of Professional Licensing was not disqualified from testifying about the malpractice lawsuit and related matters merely because he performed various administrative duties for the Board (such as receiving HUH's report of the malpractice settlement, directing the Board's Office of Compliance to investigate, and notifying Dr. Udebiuwa of the Board's actions). The Executive Director had no adjudicatory role and there was no incompatibility between his testifying and his administrative duties that would overcome the presumption that the Board acted fairly. *See Park v. District of Columbia Alcoholic Beverage Control Bd.*, 555 A.2d 1029, 1032 (D.C. 1989). Lastly, it is immaterial that the notice of proposed disciplinary action sent to Dr. Udebiuwa from the Board may have been in error in stating that Howard University had reported the malpractice settlement to the National Practitioner's Data Bank. Dr. Udebiuwa was not disciplined for anything relating to the report.

The decision of the Board of Medicine is *affirmed*.

SCHWELB, *Associate Judge*, concurring in the judgment: I agree with my colleagues that the decision of the District of Columbia Board of Medicine should be affirmed. For the reasons set forth below, however, I am unable to join the court's opinion.

In the Superior Court malpractice case, the jury returned a verdict in the plaintiff's favor, and

against Dr. Udebiuwa and Howard University, in the amount of $2,300,000. Judgment was entered on the verdict. The defendants appealed. The case was then settled for $1,500,000, and the parties filed a praecipe agreeing that "[a]s a part of the settlement agreement and release, the parties agree that the judgment entered against [the defendants] is to be vacated." No motion to vacate the judgment was filed, however, and – most significantly – the trial judge did not vacate the judgment. As my colleagues point out, *ante*, page 2, the parties could not, without the court's consent, vacate a judgment that the court had entered. Only the court could do that. Therefore, the judgment remained in effect and collaterally estopped Dr. Udebiuwa from contesting the facts found against him by the jury, namely, that he had committed malpractice against the patient who had sued him in the Superior Court.

That, to me, should be the end of this appeal, or at least of the "collateral estoppel" issue. On these facts, a judgment that has not been vacated has a "collateral estoppel" effect. It does not make any difference, on this appeal from the decision of the District of Columbia Board of Medicine, whether the judgment in the Superior Court case should or should not have been vacated. The fact is that it *was not* vacated, that it remains in effect, and that the appeal from the judgment has been dismissed, rendering the judgment final.

In spite of the foregoing, my colleagues in the majority address in some detail the question whether a judgment ought to be vacated when the parties have settled the case during the pendency of an appeal. They tell us, *inter alia*, that a judgment of the court is "valuable to the legal community as a whole," that it may have "preclusive benefits for third parties," and that only "exceptional

circumstances may conceivably counsel granting a motion for vacation at the behest of settling parties." *Ante* at pages 3-4 (citations and internal quotation marks omitted). These are certainly interesting propositions, but they have absolutely no bearing on the outcome of this case. Even if the law encouraged vacatur following settlement, and even if the judge ought to have granted a hypothetical motion to vacate the judgment if one had been filed, the fact is that the judgment in the Superior Court was not vacated, that no appeal from the judgment remains pending, that the judgment is therefore final, and that it therefore properly serves as a basis for claim preclusion. That is all that matters. In my opinion, the remainder of the discussion is purely advisory and not necessary to the court's holding.

"[A]n issue is ripe for adjudication only when the parties' rights may be immediately affected by it." *Allen v. United States*, 603 A.2d 1219, 1229 n.20 (D.C. 1992) (en banc) (citing *Smith v. Smith*, 310 A.2d 229, 231 (D.C. 1973)). Even when we sit en banc, we generally decline to issue guidelines which are not required to decide the case before us. *Id.* As we explained in *District of Columbia v. WICAL Ltd. Partnership*, 630 A.2d 174, 182 (D.C. 1993),

> [t]he suggestion that this court may "wish to give the trial court guidance" on an issue not yet presented amounts to a request that we write an advisory opinion. This court has no authority to issue advisory opinions regarding questions which may or may not arise. *Smith*, [*supra*], 310 A.2d at 231; see also *Allen*, [*supra*], 603 A.2d at 1228-29 n.20. "Courts should not decide more than the occasion demands." *Younger v. Smith*, 30 Cal.App.3d 138, 153, 106 Cal.Rptr. 225, 235 (1973). Like the Supreme Court of Washington,
>
> > [a]s a general rule, this court will decide only such questions as are necessary for a determination of the

> case presented for consideration, and will not render decisions in advance of such necessity . . . .
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> *Johnson v. Morris*, 557 P.2d 1299, 1305 (Wash. 1976) (en banc) (citation omitted); *see also Local No. 8-6, Oil, Chemical and Atomic Workers Int'l Union v. Missouri*, 361 U.S. 363, 367-68 (1960).

In light of the foregoing, I would end the analysis with the determination that Dr. Udebiuwa is collaterally estopped from contesting the determination of malpractice because the judgment in the malpractice case has not been vacated, and I would defer to another day discussion of the circumstances, if any, under which a trial judge should vacate a judgment because the parties have settled the underlying case.

GOVERNMENT OF THE DISTRICT OF COLUMBIA
BOARD OF MEDICINE

IN THE MATTER OF:	:
OPARAUGO I. UDEBIUWA, M.D.	:
License Number: MD20259	:
Respondent	:

DECISION AND FINAL ORDER OF THE BOARD

Jurisdiction

This matter comes before the District of Columbia Board of Medicine (the "Board") pursuant to D.C. Official Code § 3-1201.01 *ff.* (2001), otherwise known as the Health Occupations Revision Act (the "HORA"). The HORA, at D.C. Official Code § 3-1202.03(a)(2) (2001), authorizes the Board to regulate the practice of medicine in the District of Columbia, and D.C. Official Code § 3-1204.08(8) and D.C. Official Code § 3-1205.19 authorize the Board to conduct hearings and issue final decisions.

Background

On July 5, 2005, the Board issued a Notice of Intent to Take Disciplinary Action against the Respondent's District of Columbia medical license. The Notice charged Respondent with:

1. Having been disciplined by a licensing or disciplinary authority for conduct that would be grounds for disciplinary action under D.C. Official Code § 3-1210.04(a)(2001), for which the Board may take action pursuant to D.C. Official Code § 3-1205.14(a)(3) (2001); and

2. Having been 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)(2001), for which the Board may take action pursuant to D.C. Official Code § 3-1205.14 (a)(3)(2001).

The basis for the charges was the March 26, 2003 consent order agreement entered into between the Respondent and the Maryland Board of Physician Quality Assurance (hereinafter "Maryland Board"). In the consent order, the Maryland Board concluded as a matter of law that the Respondent:

1. Fraudulently or deceptively obtained or attempted to obtain a license for the applicant or licensee or for another, in violation of Md. Health Occ. Code Ann. § 14-404(a)(1);

2. Was guilty of unprofessional conduct in the practice of medicine, in violation of Md. Health Occ. Code Ann. § 14-404(a)(3);

3. Willfully made or filed a false report or record in the practice of medicine, in violation of Md. Health Occ. Code Ann. § 14-404(a)(11);

4. Willfully made a false representation when seeking or making application for licensure or any other application related to the practice of medicine, in violation of Md. Health Occ. Code Ann. § 14-404(a)(36); and

5. Was disciplined by a hearing or disciplinary authority for an act that would be grounds for disciplinary action under the Act, in violation of Md. Health Occ. Code § 14-404(a)(21), with underlying grounds under Md. Health Occ. Code Ann. § 14-404(a)(3) and § 14-404(a)(22).

The Respondent submitted a timely request for a hearing. The hearing in this matter was held before a panel of the Board on October 26, 2005.

Evidence

On October 26, 2005, the panel of the Board proceeded with the hearing in this matter.[1] Assistant Attorney General, David Lastra, represented the Government. John T. Riely, Esq. represented the Respondent. Mr. Lastra called no witnesses. The Government, with the consent of the Respondent, introduced one (1) exhibit, the authenticity of which was stipulated to by the Respondent. (Tr. 10/26/05- P. 15, Ln. 5-10). Government's Exhibit #1 was a certified copy of

[1] The members present and holding the hearing were William E. Matory, M.D. (Chairperson who presided over the hearing), John Lynch, M.D. and Anthony Towns, Esq. Lawrence Manning, M.D. was listed as an alternate, but was not present during the hearing. Carla M. Williams, Esq. served as attorney-advisor to the Board.

the consent order entered into between Dr. Oparaugo Udebiuwa and the Maryland Board on March 26, 2003. The exhibit was marked and admitted into evidence. (Tr. 10/26/05- P. 16, Ln. 2-3). In the consent order, the Respondent admitted to the Maryland Board's findings of fact and conclusions of law.[2]

Counsel for the Respondent called only one witness, the Respondent. The Respondent testified that a lawsuit was brought against him in the District of Columbia in the early 1990s, 1992 specifically. (Tr. 10/26/05- P. 18, Ln. 13-19).[3] Respondent testified that the case was tried, settled and appealed again. (Tr. 10/26/05- P. 19, Ln. 4-5). Respondent testified that as a result of the lawsuit, a disciplinary action was brought [against him] before the D.C. Board of Medicine in 1998. (Tr. 10/26/05- P.19, Ln. 6-11). Respondent testified that the disciplinary action matter went on intermittently from 1998 to 2001. (Tr. 10/26/05- P. 19, Ln. 12-13, 21-22; P. 20 Ln. 1). Respondent testified that the ultimate result of the disciplinary action did not in any way impede or restrict his license to practice medicine. (Tr. 10/26/05- P. 20, Ln. 15-17).

The Respondent testified that during the period of time from when the lawsuit was filed in the early 1990s up until 2001 when the Administrative Law Judge finally issued her decision [in the disciplinary matter], he had occasion during that period of time to file renewal applications of his medical license in Maryland, the District of Columbia, and Virginia. (Tr. 10/26/05- P. 21, Ln. 4-12). The Respondent testified that during the late 1990s when he filled

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[2] The Findings of Fact and Conclusions of law as set forth in the 3/26/03 consent order are a part of the evidentiary record of this hearing.

[3] The Respondent testified that the nature of the allegation brought by the plaintiff in the malpractice suit was that there was a relationship between the plaintiff and the Respondent and that she was not properly treated at Howard University (Tr. 10/26/05- P. 27, Ln. 1-6). The Respondent testified that at the time the lawsuit was filed, he was employed at Howard University Hospital as a resident in psychiatry. (Tr. 10/26/05- P. 27, Ln. 10-15). Respondent testified that he has never admitted to having an inappropriate social relationship with the plaintiff and that he did not have an inappropriate relationship with the plaintiff. (Tr. 10/26/05- P. 27, Ln. 16-22). Respondent testified that the jury in the case found otherwise and found that he had violated the standard of care. (Tr. 10/26/05- P. 28, Ln. 1-7).

out renewal applications in the state of Maryland his response as to whether disciplinary actions were pending against him was "No." (Tr. 10/26/05- P. 22, Ln. 3-8). Respondent testified that the applications would be filled out and given to him to sign. (Tr. 10/26/05- P. 22, Ln. 20-21). Respondent testified that the secretary in his office filled out the applications. (Tr. 10/26/05- P.22, Ln. 22; P. 23-1-3). Respondent testified that the [secretaries] were encouraged to fill out the applications for [the doctors] because [the doctors] were very busy doing other things. (Tr. 10/26/05- P. 23, Ln. 5-7).

Respondent testified that he did not give the [secretaries] any specific instructions as to his issue because it never really occurred to him and secondly, he thought that since a decision had not been made in the case, that he probably should not talk about the case since it was before a judge, so he kept it to himself. (Tr. 10/26/05- P. 23, Ln. 8-18).

The Respondent testified regarding signing the renewal application without properly reviewing its content, that it was like a template and always similar most of the time. (Tr. 10/26/05- P. 28, Ln. 18-22). Respondent testified that it's like the same as the previous one, so he would just look and if nothing had changed, he would go ahead and sign it. (Tr. 10/26/05- P. 29, Ln. 3-6). Respondent testified that he did not make an effort to tell his colleagues or administrative staff that there had been a change in the template because he didn't remember and he felt it was still being litigated and no decision had been made. (Tr. 10/26/05- P. 29, Ln. 7-15).

The Respondent testified that after the administrative matter was finally resolved, when he signed a renewal [application] he explained exactly what had happened. (Tr. 10/26/05- P. 29, Ln. 16-18; P. 30, Ln. 1-5).

The Respondent testified that with regard to completing renewal applications, now he goes to his attorney's office and they go through the application together and determine what the

appropriate answer should be because he doesn't want to put himself in a position to make a misstatement anymore. (Tr. 10/26/05- P. 30, Ln. 8-20). The Respondent testified he goes through this procedure when renewing his license renewal applications as well as when renewing his malpractice insurance license. (Tr. 10/26/05- P. 30, Ln. 21-22; P. 31, Ln. 1-7). Respondent testified that he now reviews each application before it's submitted. (Tr. 10/26/05- P. 31, Ln. 21-22; P. 32, Ln. 1).

Findings of Fact

The Board finds the following:

1. At all times relevant, the Respondent was and is licensed to practice medicine in the District of Columbia. The Respondent was initially licensed to practice medicine in the District of Columbia in 1993 under License number MD20259.

2. The Respondent specializes in the practice of psychiatry.

3. The evidence is sufficient to establish that by consent order dated March 26, 2003, the Maryland Board reprimanded the Respondent, placed him on probation for a period of three years, and ordered him to pay a $10,000 fine, undergo psychotherapy, and complete a tutorial program in medical/psychiatric ethics. The order was based upon the Maryland Board's determination, with the Respondent's written consent, that he had committed the following violations:

(a) Fraudulently or deceptively obtaining or attempting to obtain a license for you or for another, in violation of Maryland Health Occupations Code Annotated section 14.404(a)(1);

(b) Is guilty of unprofessional conduct in the practice of medicine, in violation of Md. Health Occ. Code Ann. § 14-404(a)(3);

(c) Willfully making or filling a false report or record in the practice of medicine, in violation of Maryland Health Occupations Code Annotated section 14.404(a)(11);

(d) Willfully making a false representation when seeking or making an application related to the practice of medicine, in violation of Maryland Health Occupations Code Annotated section 14.404(a)(36); and

(e) Was disciplined by a hearing or disciplinary authority for an act that would be grounds for disciplinary action under the Act, in violation of Md. Health Occ. Code Ann. § 14-404(a)(21), with underlying grounds under Md. Health Occ. Code Ann. § 14-404(a)(3) and § 14-404(a)(22).

4. The evidence is sufficient to establish that on March 11, 2003, Respondent signed a consent form, as part of the Maryland Board's March 26, 2003 consent order, in which the Respondent admitted to the following findings of fact:

(a) On or about August 8, 1997, Respondent submitted a provider application with Maryland Health Partners (a mental health services organization). The application requested that he provide information about any prior or pending legal actions and the number of malpractice claims that were pending or closed against him. Respondent failed to disclose in the application that he had been the subject of a legal action and had at least one malpractice claim filed and/or closed against him.

(b) On or about April 6, 1998, Respondent submitted a medical staff appointment application with the Walter P. Carter Center in Baltimore, Maryland in which he failed to disclose that he had been named a defendant in a malpractice action. This information was requested in the application.

(c) On or about April 7, 1998, Respondent submitted a provider application with Preferred Mental Health Management, Inc. (a mental health care services organization) in which he failed to disclose that he had been successfully sued for malpractice in the District of Columbia in 1995. This information was requested in the application.

(d) On or about May 6, 1998, the District of Columbia Board of Medicine, initiated disciplinary proceedings against Respondent for failure to conform to the standards of acceptable conduct and prevailing practice with the medical profession, in violation of then D.C. Code section 2-3305.14(a)(26)(1994), and for demonstrating a willful or careless disregard for the health, welfare, or safety of a patient, in violation of then D.C. Code section 2-3305.14(a)(28)(1994).

(e) On or about July 10, 1999, Respondent submitted an application for renewal of his Maryland medical license to the Maryland Board in which he failed to disclose he had been the subject of a disciplinary action by the D.C. Board of Medicine. This information was requested in the application.

(f) On or about June 26, 2000, Respondent submitted an application for reappointment to the Walter P. Carter Center's medical staff in which he failed to disclose that he had been and was presently the subject of a disciplinary proceeding by a medical organization or professional peer review committee. This information was requested in the application.

(g) On or about August 6, 2001, Respondent submitted an application for renewal of his medical license to the Maryland Board in which he failed to disclose that the D.C. Board of Medicine had pending charges against him, and that on July 25, 2001 the D.C. Board of Medicine had reprimanded him for violation of D.C. Code section 2-3304.14(a)(26) and (28)(1994), fined him $10,000, and placed him on probation for three years.

5. The evidence is sufficient to establish that on or about July 10, 1999, Respondent submitted an application for renewal of his Maryland medical license to the Maryland Board in which he failed to disclose he had been the subject of a disciplinary action by the D.C. Board of Medicine. This information was requested in the application.

6. The evidence is sufficient to establish that on or about August 6, 2001, Respondent submitted an application for renewal of his medical license to the Maryland board in which he failed to disclose that the D.C. Board of Medicine had pending charges against him, and that on July 25, 2001 the D.C. Board of Medicine had reprimanded him for violation of D.C. Code section 2-3305.14(a)(26) and (28)(1994), fined him $10,000, and placed him on probation for three years.

Conclusions of Law

D.C. Official Code § 3-1205.14 (2001) 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.

District of Columbia Municipal Regulations ("DCMR") Title 17 § 4115.1 provides:

"In a hearing resulting from a proposed disciplinary action taken under DCMR § 17-4102.1, the District shall have the burden of proving by a preponderance of the evidence that the action should be taken."

The Board hereby finds by a preponderance of the evidence and concludes as a matter of law that Respondent was disciplined by a licensing or disciplinary authority for conduct that would be grounds for disciplinary action under D.C. Official Code § 3-1210.04(a)(2001) (Filing false document or evidence; false statements); and that would be grounds for disciplinary action under D.C. Official Code § 3-1205.14(a)(1) (Fraudulently or deceptively obtains a license) for which the Board may take the proposed action pursuant to D.C. Official Code § 3-1205.14(a)(3)(2001).

By order dated March 26, 2003, the Maryland Board disciplined the Respondent by reprimanding him, placing his license on probation for a period of three years, and ordering the Respondent to pay a $10,000 fine, undergo psychotherapy, and complete a tutorial program in medical/psychiatric ethics. The order was based upon the Respondent's conduct of filing false or misleading statements which included submission of false statements to the Maryland Board on the Respondent's application for renewal of his Maryland medical license on or about July 10, 1999 and again on or about August 6, 2001. This conduct committed by the Respondent would be grounds for disciplinary action by the Board under D.C. Official Code § 3-1210.04(a)(2001) which states:

> "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."

The conduct committed by the Respondent would also be grounds for disciplinary action by the Board as a violation of D.C. Official Code § 3-1205.14(a)(1):

> "Fraudulently or deceptively obtains or attempts to obtain
> a license for an applicant or licensee or for another person."

The evidence presented of the Respondent's other conduct concerning the filing of false statements with the Walter P. Carter Center, the Maryland Health Partners and Preferred Mental Health Management, Inc., to obtain provider and staff privileges, does not directly support a finding of a violation of the specified charges. Charge I: pertains to false statements or evidence submitted to the Board or the Mayor, and Charge II: pertains to fraudulently or deceptively obtaining or attempting to obtain a license. This is not to imply that this conduct could not otherwise form the basis for a violation of District of Columbia law, only that this conduct does not form the basis for the charges filed in the instant matter. Nevertheless, the evidence of this other conduct may certainly be considered by the Board for purposes of determining the sanction to be imposed in this matter.[4]

Decision

In formulating its decision as to the appropriate sanction to be imposed, the Board took the following into consideration: the nature of the charges, the repeated submissions of false statements both to the Maryland Board and to the other entities in which the Respondent had a duty to be forthcoming and truthful; the explanations offered by the Respondent as to why he did not disclose the malpractice action and disciplinary action when required to do so, and the Respondent's subsequent efforts to ensure against future occurrences of this behavior.

The submission of false and/or misleading statements to a professional licensing board to obtain or attempt to obtain a license is a serious matter. The Respondent engaged in this misconduct on two separate occasions both on July 10, 1999 and again two years later on August 6, 2001, as well as in a number of other separate instances when submitting provider applications

[4] "It is well settled that trial judges have great latitude in the sentencing process. The court may examine any reliable evidence, including that which was not introduced at trial, and may consider a wide range of facts concerning a defendant's character and his crimes." *Caldwell v. United States,* 595 A.2d 961, 1991 D.C. App. LEXIS 184 (D.C., June 27, 1991, Decided).

and medical staff appointment applications. In each instance, the Respondent elected to withhold required and important information.

The Respondent testified that his reasoning for not disclosing this information when required to do so was because he didn't remember, he didn't think he should disclose it because it was still pending before a judge, and he didn't review the applications that were completed for him by his office staff. None of these explanations are exculpatory. The Respondent's explanation that he "didn't remember" a malpractice action that went on for a period of three years is difficult to believe at best.

Likewise, the Respondent's explanation that he did not think he should discuss the pending disciplinary matter because it was before a judge lacks merit. Due to the nature of the underlying charges, i.e. a malpractice suit wherein the Respondent was found by a jury to have engaged in an inappropriate social relationship with a client, it is more likely that the Respondent's conduct in failing to disclose the malpractice suit or the pending disciplinary action in his renewal application to the Maryland Board was an intentional act of concealment. The Respondent testified that after the conclusion of the disciplinary matter he began disclosing these matters on his renewal applications. However, the disciplinary action would have also at this time been reported to the National Practitioner Data Bank. Wherefore, it then became a possibility that the Maryland Board would have discovered this information on its own.

Moreover, the Respondent's explanation that he failed to review the applications that were prepared for him by staff is of no merit. Respondent admits that he never provided his staff the necessary information to accurately complete the application. Therefore, Respondent had no reason to think that the staff member would have included the information concerning the pending disciplinary action or the malpractice suit on the application. That even

notwithstanding, Respondent's negligence in failing to review his licensure renewal application before signing and attesting to its accuracy can hardly serve as an excuse to the false statements that were ultimately submitted to the Maryland Board on two separate occasions.

The Respondent has taken steps to ensure that this conduct will not again occur in the future. Respondent appears to now understand the importance of full and complete disclosure in answering licensure renewal applications and other applications regarding his medical license. Furthermore, Respondent appears to be in compliance with the terms of his Maryland consent order.

Pursuant to 17 DCMR § 4113, the attorney for the government and counsel for the respondent were each allotted an opportunity to file exceptions to the panel's recommended decision. No exceptions were filed.

FINAL ORDER

Based upon the aforementioned it is hereby **ORDERED** that the license of Oparaugo I. Udebiuwa, M.D. License number: MD20259, shall be and is hereby placed on – **PROBATION** for a period of one (1) year from the effective date of this ORDER; and it is further

ORDERED that Respondent shall within thirty (30) days from the effective date of this Order, submit a Letter of Fitness to Practice from a psychiatrist approved by the Board; and it is further

ORDERED that Respondent shall within thirty (30) days from the effective date of this Order, submit a Letter of Compliance from his compliance monitor as assigned by the Maryland Board regarding the Respondent's compliance history with the terms of the Maryland consent order dated March 26, 2003; and it is further

ORDERED that Respondent shall within thirty (30) days from the effective date of this Order, complete a minimum three (3) credits ethics course approved by the Board and submit proof of completion to the Board; and it is further

ORDERED that Respondent shall within thirty (30) days from the effective date of this Order, pay a fine in the amount Two Thousand Five Hundred Dollars ($2,500.00), which shall be made payable to **"D.C. Treasurer"** and shall be submitted to James R. Granger, Jr., Executive Director for the District of Columbia Board of Medicine, at 717 14th Street, NW, 6th Floor, Washington, D.C. 20005.

12/21/05
Date

Frederick C. Pinelli, M.D., J.D.
Chairperson
District of Columbia
Board of Medicine

Judicial and Administrative Review of Actions of Board

Pursuant to D.C. Official Code § 3-1205.20 (2001):

> 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 (2001).

Pursuant to D.C. Court of Appeals Rule 15(a):

> Review of orders and decision of an agency shall be obtained by filing with the clerk of this court a petition for review within thirty (30) days after the notice is given.

DISTRICT OF COLUMBIA
DEPARTMENT OF HEALTH
BOARD OF MEDICINE

IN RE:

Oparaugo I. Udebiuwa, M.D.	:
Medical License # MD 20259	:
	:
Respondent	:

DECISION AND ORDER OF THE BOARD

Jurisdiction

This matter comes before the District of Columbia Board of Medicine pursuant to D.C. Official Code § 3-1202.03(a) (2) (2001) otherwise known as the Health Occupations Revision Act ("HORA"). The "HORA" provides for the regulation of the practice of medicine by the D.C. Board of Medicine.

Background

On June 27, 2007 a panel composed of members of the Board of Medicine (the "Board") met to hear the case against Dr. Oparaugo I. Udebiuwa (the "Respondent"). The panel consisted of three (3) members of the Board of Medicine.[1]. Maureen Zaniel, Esq. represented the Government.[2] The Respondent was represented by Melinda Van

[1] The panel consisted of: Dr. Frederick C. Finelli (presiding officer), Dr. Cheryl Williams, and Ronald Simmons, Ph.D. John Greenhaugh, Esq. served as attorney-advisor to the panel.
[2] Ms. Zaniel, Esq., is a Senior Assistant Attorney General in the Civil Enforcement Division of the Office of the Attorney General.

Lowe, Esq.[3] The Amended Notice of Intent to Take Disciplinary Action (the "NOI") containing the Charges against the Respondent had been signed by the Chairperson for the Board of Medicine on January 8, 2007 and had been served on the Respondent's then counsel by certified letter dated January 9, 2007. By letter dated January 16, 2007, the Respondent's then counsel had requested a hearing in the matter. By letter dated January 26, 2007, the Respondent was informed by the Executive Director for the Board of Medicine that the hearing was scheduled for June 27, 2007.

Charge I of the NOI charged the Respondent with a violation of D.C. Official Code § 3-1205.14 (a) (4) in that the Respondent had been convicted of a crime involving moral turpitude which bears directly on his fitness to be licensed in the District of Columbia. Specifically, the charge as set forth in Specification A of the Charge was that the Respondent on or about June 7, 2006, had pled guilty in the Criminal Court of Baltimore, Maryland, to five counts of Medicaid fraud in which he admitted to billing Medicaid for services that were not rendered; and that on or about October 16, 2006, the Respondent was sentenced to three years of imprisonment with two years suspended and three years of supervised probation for the convictions.

The second charge in the NOI was that the Respondent had violated an order of the District Board of Medicine, such conduct in violation of D.C. Official Code § 3-1205.14 (a) (27). Specifically, the Government alleged through four (4) Specifications

[3] Ms. Van Lowe is a member of the Bar of the State of Virginia, Bar No. 51143. Ms. Van Lowe is with the law firm of Greenspun, Davis and Leary, 3955 Chain Bridge Road, Second Floor, Fairfax, Virginia 22030. Local counsel on the case representing the Respondent was Mr. Thomas Lester, Esq., D.C. Bar No 468115 of 2141 P Street, Suite 103, Washington, D.C. Mr. Lester moved the admission of Ms. Van Lowe to appear Pro Hac Vice and Government counsel had no objection. Ms. Van Lowe submitted as Respondent's Exhibit # 1 a Pro Hac Vice form completed with all relevant data. Respondent's Exhibit # 1 is incorporated by reference.

that the Respondent had failed to abide with a prior Order of the Board of Medicine dated December 21, 2005 by failing in four different ways to comply with that Order.[4]

Evidence

Presentation by the Government

Ms. Zaniel called one witness, Mr. James Granger.[5] Mr. Granger was sworn and testified. Through the testimony of Mr. Granger the Government introduced four (4) exhibits which were marked and admitted into evidence[6]: Government Exhibit (GE) #1 is a Final Order of the Board, dated December 21, 2005, in which disciplinary action was imposed against the Respondent in which he was given probation for one year, required within thirty (30) days of the Order to submit a letter of fitness-to-practice from a psychiatrist approved by the Board, and to submit a letter of compliance from his compliance monitor as assigned by the Maryland Board. Within thirty (30) days of the date of the Order the Respondent was also to complete a three-hour credit course in Ethics approved by the Board and to pay a fine of two thousand five hundred dollars ($2,500).

Government Exhibit # 3 was marked for marked for identification and Mr. Granger testified that Government Exhibit #3 was a printout of the disposition of a criminal court case in Criminal Court of Baltimore regarding the Respondent. Mr. Granger had first received written notice from the Respondent's attorney at the time that

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[4] The NOI is hereby incorporated by reference. Since the Board found that the Government had not proven the Charge II and its specifications by a preponderance of the evidence, those Specifications will not be set forth in detail and the evidence relating to them will not be presented in this Order, except as the evidence relates to payment of a fine in the first Order of the Board.

[5] Mr. James Granger is the Executive Director for the D.C. Board of Medicine.

[6] The Respondent had no objection to the admission of Government Exhibit (GE) # 1.

he (the Respondent) had pled guilty to "several counts of Medicaid fraud."[7] The information was written in the same letter that requested a hearing on the original NOI. GE # 3 states on it that it is a true copy that Mr. Granger testified probably came to his possession through "one of our investigators."[8] This document was the reason that the charges against the Respondent were amended to include the conviction in Maryland. The amended NOI was sent by certified mail by the Respondent's attorney at that time on January 9, 2007 and on January 22, 2007 Mr. Granger again received a request for a hearing from the attorney. Since the date requesting the hearing Mr. Granger has received no information from the Respondent or his attorney at that time up until the date of this hearing that would be construed as fulfilling the requirements set forth in the first Order of the Board dated December 21, 2005, including payment of the two thousand five hundred dollar ($2500.00) fine. No part of the fine has been paid.[9]

Pursuant to questions from the Government counsel Mr. Granger recited the past history of the Respondent with the Board.[10] Specifically, the first action the Board took against the Respondent was on July 25, 2001, when the Board reprimanded him, fined him and placed him on probation for failing to conform to acceptable conduct and prevailing practice in his treatment of a patient. The origin of that action had been a malpractice suit in which a judgment against the Respondent and the hospital he was practicing in was reduced by settlement to $1.5 million, as a result of the Respondent entering into a sexual and social relationship with his patient.[11] That Board Order was

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[7] Transcript, page 27.
[8] Ibid.
[9] Ibid, page 29. However, the Board notes that the Respondent paid the fine October 18, 2007.
[10] Counsel for the Respondent objected to this line of questioning but the Presiding Officer allowed it to come in for the limited purpose of determining an appropriate sanction should the Panel reach that point. See transcript, page 32 - 34.
[11] Transcript, page 30.

appealed by the Respondent to the Court of Appeals for the District of Columbia where the appeal was denied.[12] Respondent's counsel did not object to the Board taking judicial notice of the Court of Appeals case.[13]

The second time the Board took an action against the Respondent was in December 21, 2005, when the Board took a reciprocal action against the Respondent's license based on action taken by the Maryland Board, and issued a Final Order. When Government counsel moved to admit GE # 3, Respondent's counsel did not object, but requested "that the Board admit it into evidence for what it is, which is a print out of - - what appears to be a computer print out of a charge and a conviction."[14] The Presiding Officer admitted GE # 3 into evidence "for what it is, which is a disposition and charge."[15] On cross-examination Mr. Granger testified that he did not attend the Respondent's court hearing in Maryland but that he had been told of the conviction by the Respondent's attorney and that there was on GE # 3 "an attestation from the Clerk of the Court that it is true information."[16]

On re-direct examination Mr. Granger recalled that he was familiar with a Washington Post article about the conviction of the Respondent that is similar to GE # 3 in terms of the plea and the sentence. Government counsel had the news article marked as GE # 4 and introduced it into evidence.[17]

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[12] Udebiuwa v. District of Columbia Board of Medicine, 818 A. 2nd 160.
[13] Transcript, page 37.
[14] Ibid, page 36.
[15] Ibid, page 37.
[16] Ibid, page 39. GE # 3 is hereby incorporated by reference.
[17] Respondent's counsel objected to it's admission into evidence but the Presiding Officer overruled the objection, finding the article probative in the context of cross-examination where Respondent's counsel attempted to portray Mr. Granger's knowledge of the fact of the conviction as weak and unsubstantiated. See Transcript page 55 and 57

was found liable. The sanctions are similar to those imposed in like cases and take into account the history this Respondent has with this Board and his non-compliance with prior Orders of this Board. Although the Board is cognizant of the potential effect a suspension will have on current patients, the suspension is designed to be as short as the Respondent can make it as compliance with those aspects of the Order that will lift the suspension are within the control of the Respondent. Additionally, the Board cannot allow the Respondent to use the patients he currently has to be a shield against the authority and jurisdiction of this Board. The Board's sanctions are for the benefit of patients, current and future ones. Respondent acknowledges and "...does not dispute the facts of this case, nor the legal analysis of the Board."[18]

The Board thus issues the following Order:

ORDER

Based upon the aforementioned, it is hereby **ORDERED** that Laurence T. Allen, M.D.-

- Shall be FINED two thousand five hundred dollars ($2500.00) to be payable in one lump sum within six (6) months of the date of this Order.
- Shall have his license to practice medicine SUSPENDED on the date of this Order, and said license shall remain suspended until Dr. Allen submits to the Board of Medicine a Fitness-to-Practice letter from a Board-approved psychiatrist that specifically addresses any need to undergo psychotherapy, and

[18] Page 2, under discussion of Respondent's Motion.

matter has filed motions attempting to overturn his plea of guilty in Maryland. The Respondent stated that his attorney in Maryland has filed a motion requesting Probation before Judgment (PBJ) and another motion requesting that the sentence be reconsidered based upon a willingness by the trial court in Maryland to consider a Probation before Judgment after the two years of probation and counsel has filed the appropriate motion with the court. The Respondent essentially is requesting the Circuit Court of Maryland to institute the PBJ earlier than it had first been contemplated being considered.[23]

As to the factual background of the Medicaid fraud charges, the Respondent testified that it was never his intent to defraud anyone. He began to do his billing himself for his practice because his contractor's efforts to have him reimbursed did not seem to be working, and he even requested assistance from the Maryland Health Partners. However, he did not understand the codes for proper billing and he wanted to learn how to do the billing. He was in a very narrow timeframe to get the billing documents in to the payor, and he was evidently not doing them correctly because the next thing he realized was that he was notified by the Maryland Attorney General's Office, and he was indicted for fraud. It was never the Respondent's intention to bill for services not provided or to defraud anyone.[24]

On cross-examination the Respondent testified that the Judge in Maryland "probably" did ask him to admit facts that formed the basis of the guilty plea. When Government counsel asked Respondent if he was aware that the Attorney General of Maryland issued a press release that stated the respondent had pled guilty for billing for services that he didn't render, the Respondent acknowledged "I'm aware of that, that I

[23] Transcript, page 114.
[24] Ibid, pages 116 – 121.

did all those activities."[25] During cross-examination of the Respondent he was asked about a hearing he had before the Virginia Board of Medicine in the spring of 2007. Upon the conclusion of the testimony of the Respondent, the Respondent's counsel rested her case.

Conclusions of Law

The applicable provisions of District law include the following:

D.C. Official Code § 3-1205.14 (a) (4) provides:

> "Has been convicted in any jurisdiction of any crime involving moral turpitude, if the offense bears directly on the fitness of the individual to be licensed."

D.C. Official Code § 3-1205.14 (c) provides authority for the Board to impose the following sanctions on licensees that the Board has found committed an act described in subsection (a): The board may suspend the license of any licensee, ... require some form of remediation, and fine the licensee a civil fine not to exceed five thousand dollars ($5,000.), among other potential sanctions.

Counsel for the Respondent argued during a motion to dismiss after the Government rested its case[26], and again at the conclusion of the case, that the Government needed to prove that the Maryland conviction was a crime of moral turpitude and that the crime also bore directly on the Respondent's fitness to be licensed.

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[25] Ibid, page 138.

[26] The Presiding Officer, after hearing argument from both sides, overruled the respondent's motion to dismiss the charges and allowed the Hearing to continue. This was a correct decision. The evidence introduced before the Government rested was that the Respondent's own attorney had notified the Executive Director of the conviction, the Board obtained a certified copy of the conviction and disposition from the Clerk of Court (GE # 3), and a newspaper article was introduced that corroborated the other evidence introduced. The strength of the evidence was such as to allow the Hearing to continue, given the rules of evidence in administrative hearings and the burden of proof on the Government.

Additionally, Counsel argued that it was the Government's burden to prove that a misdemeanor is a crime sufficient to trigger a violation of the statute. At the conclusion of closing argument by both counsel, the Presiding Officer requested both counsel to submit two (2) page briefs on the issue of the Government's burden to prove an offense is per se a crime of moral turpitude and whether moral turpitude is an element of an offense that must be proven by a preponderance of the evidence. Additionally, the Presiding Officer requested both counsel to address the issue of whether or not a misdemeanor per se could ever be a crime of moral turpitude.[27]

After considering the submissions of both counsel the Panel determined that a misdemeanor conviction would qualify under the statute as a crime that may involve moral turpitude. The statute, D.C. Official Code § 3 – 1205.14 (a) (4) by its plain meaning does not limit itself to felonies, stating instead "convicted…of any crime involving moral turpitude." (Emphasis added) Additionally, case law supports the proposition that misdemeanors may be crimes involving moral turpitude, and that health care fraud itself is a crime of moral turpitude and bears directly on the licensee's fitness to be licensed.[28]

Respondent's guilty plea to a crime of health care fraud is per se a conviction of a crime involving moral turpitude, and that holds true even if the conviction is to a misdemeanor charge of health care fraud. The Panel found Respondent's testimony as to why he pled guilty and did not contest the charge, and what his intent was or was not at

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[27] The submissions of both counsel are hereby incorporated by reference.

[28] See Mark L Beck, D.D.S., Respondent; Case No.: DH-B-06-800035, District of Columbia Office of Administrative Hearings, at 2007 D. C. Off. Adj. Hear. Lexis 4; Carl F. Oltman, Sr. v. Maryland State Board of Physicians (2004), 162 Md. App. 457; 875 A.2d 200; 2005 Md. App. LEXIS 61; and Attorney Grievance Commission of Maryland v. Joseph Walman (1975) Court of Appeals Maryland, 280 Md. 453; 374 A.2d 354; 1977 Md. LEXIS 860.

the time he over-billed for Medicaid services at worst self-serving and at best not relevant when by his own testimony he had to repay twenty-two thousand dollars ($22,000) for services billed for but not provided, and additionally he was fined sixty-four thousand dollars ($64,000) as part of the punishment for the crime. The Respondent testified that he repaid the amount owed plus the penalty as "a way to have my sanity, I was willing to do that."[29] At any rate, the plea of guilty to a crime involving an intent to defraud is sufficient to constitute a crime involving moral turpitude, and if it relates to health care fraud, it bears directly on the fitness of the licensee to be licensed.

The Government has no additional burden, once the fact of the conviction is admitted into evidence, to prove that the conviction is an offense involving moral turpitude or that it bears directly on the licensee's fitness to be licensed. The Panel, and the Board, may resolve such matters consistent with their own findings of fact and applicable case law.

The Panel found, and the Board adopted the Finding, that the facts alleged, if proven by the Government by a preponderance of the evidence, would constitute a violation of D.C. law for which appropriate sanctions may be imposed on the Respondent.

Findings of Fact

On June 27, 2007 following the Hearing, the Panel in executive session discussed the documentary evidence, the testimony of Dr. Udebiuwa and the testimony of the Government's witness. The Panel found that there was jurisdiction over the Respondent and over the offenses charged. The Panel unanimously found that Charge II and its

[29] Transcript, page 159.

Specifications had not been proved by a preponderance of the evidence. However, during the June 27th executive session and in a subsequent executive session to consider the briefs filed by both counsel, the Panel did find unanimously that Charge I and its Specification had been proven by a preponderance of the evidence. The Panel further found, and the Board adopts, the following facts and conclusions of law:

(1) The Respondent pled guilty to a misdemeanor criminal charge of fraud in the State of Maryland relating to the billing for Medicaid services not provided as set forth in Charge I, Specification A. This is in violation of D.C. Official Code § 3-1205.14 (a) (4).

(2) The Board recognizes that the Respondent has filed two motions in Maryland State Court to have his sentence reconsidered or in the alternative to have the Court enter a Probation Before Judgment. However, at the present time the Respondent stands convicted of the misdemeanor crime of Medicaid fraud in Maryland court.

(3) The offense of Medicaid fraud is a crime involving an intent to defraud in the provision and billing of health care services and as such bears directly on the Respondent's fitness to be licensed. But for the license to practice and position of responsibility vis a vis the treatment of patients by the Respondent, he would not have had access to patients or been able to fraudulently bill for services not provided.

(4) The offense of Medicaid fraud is a crime involving moral turpitude whether the offense is pleaded to as a felony or misdemeanor.

(5) The offense of Medicaid fraud is a crime that bears directly on the fitness of the licensee to be licensed, whether or not that crime is a felony or misdemeanor.

(6) The crime of Medicaid fraud is per se a crime of moral turpitude for a physician under the facts presented to this Board and under case law, and such need not be proven by evidence presented to the Board, other than by evidence of the conviction itself. Under the facts of this case, such a determination is a question of law for the Board to determine.

(7) Charge II and its Specifications were not proven by a preponderance of the evidence and should be dismissed with prejudice.

Decision

In light of the preceding Conclusions of Law and Findings of Fact, the Panel by unanimous vote recommended the following proposed Order to the Board of Medicine[30], and the Board of Medicine at its regularly scheduled meeting on September 26, 2007, after being briefed on the case by the Panel members and after a full discussion in executive session, voted to adopt the recommended Order in whole as the Order of the Board of Medicine.

Following the procedures outlined in DCMR § 4113.7, the Recommended Order was sent to the Counsel for Respondent for comment within the ten (10) day allotted timeframe. The Order was received by certified mail on October 2, 2007, and Counsel's submission was received October 17, 2007 by the Board of Medicine in an envelope date stamped in Baltimore, MD on October 15, 2007. Thus the filing is outside the timeframe

[30] See D.C. Municipal Regulation (DCMR) § 4113.4 through 4113.8 for the procedure used when a panel hears the case.

permitted by the DCMR. Nevertheless, the Board has elected to consider the submission as a general request for a particular form of clemency by someone representing the Respondent on other matters and the letter dated October 12, 2007 is incorporated by reference. However, the Board finds that the "filing of exceptions" is in substance a request for a deferral of the Suspension not by an attorney who is before the Board in regard to this Hearing and this Order, and not within the parameters of DCMR § 4113.7. The letter is signed by the Counsel who represents the Respondent in his post-conviction legal proceedings in Maryland, not by Counsel who represented the Respondent before the Board. The letter alleges that the Respondent was never told in the Maryland proceedings by his former Maryland attorney or the Maryland Court that his guilty plea to "local misdemeanor charges would, or even could, jeopardize his medical license." The attorney now representing the Respondent with regard to the Maryland conviction requests that the Board of Medicine defer the "effective date of the suspension until the Post Conviction Petition proceedings are resolved." The letter estimates that the "entire procedure should be completed within 5 months or so."

The Board has considered this request and declines to defer the suspension of license. The Respondent has been before this Board on three separate occasions for three separate incidents of serious misconduct within seven (7) years. His testimony at the most recent Hearing for the offense now before us indicates both a lack of remorse and a refusal to accept any responsibility for any of the three separate incidents of misconduct which led to Orders by this Board. As a result of the second Hearing in 2005, the Respondent did not comply in all respects with the Board's Order, and although the Board recognizes that the Charge and Specifications relating to the December 21, 2005

Order were ultimately dismissed by the Board upon recommendation of the Panel that heard the matter, the Respondent in his most recent testimony did not take responsibility for that failure to comply, assigning that failure also to his former attorney. The Board believes it in the interest of the administration of the Board's duties to the public and to the profession, and the Respondent's responsibilities to the public and to his profession that the sanction not be deferred. The Board does not, and did not formerly, consider the Respondent's testimony on charges dismissed when determining an appropriate sanction, but when the Respondent requests a deferment of the suspension, the Board is cognizant of his general demeanor and testimony before the Panel.

The Board thus issues the following Order:

ORDER

Based upon the aforementioned, it is hereby **ORDERED** that Oparaugo I. Udebiuwa, M.D.-

- Shall have his license to practice medicine SUSPENDED on the effective date of this Order, and said license shall remain suspended for a period of one (1) year.
- Shall submit to the Board of Medicine a Fitness-to-Practice letter from a Board-approved psychiatrist who is approved in advance prior to requesting the Suspension be lifted.
- May petition the Board after one (1) year from the effective date of this Order to have the SUSPENSION lifted, subject to an approved Fitness-to-Practice letter.

10/31/07
Date

Frederick C. Finelli, M.D., J.D.
Chairperson
Board of Medicine

Judicial and Administrative Review
Of Actions of the Board

Pursuant to D.C. Official Code § 3-1205.20 (2001):

> 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 § 2-510.

Pursuant to D.C. Court of Appeals Rule 15(a):

> Review of orders and decisions of any agency shall be obtained by filing with the clerk of this court a petition for review within thirty days after the notice is given.

This Order shall be deemed a FINAL ORDER and a public record.

DISTRICT OF COLUMBIA
DEPARTMENT OF HEALTH
BOARD OF MEDICINE

IN RE:

Oparaugo I. Udebiuwa, M.D.	:
Medical License # MD 20259	:
	:
Respondent	:

FINAL ORDER OF REVOCATION

Jurisdiction

This matter comes before the District of Columbia Board of Medicine pursuant to D.C. Official Code § 3-1202.03(a) (2) (2001) otherwise known as the Health Occupations Revision Act ("HORA"). The "HORA" provides for the regulation of the practice of medicine by the D.C. Board of Medicine.

Background

On June 25, 2008 a panel composed of members of the Board of Medicine (the "Board") met to hear the case against Dr. Oparaugo I. Udebiuwa (the "Respondent"). The panel consisted of three (3) members of the Board of Medicine.[1]. Maureen Zaniel, Esq. represented the Government.[2] The Respondent was represented by John Riely, Esq.[3]

[1] The panel consisted of: J. Anthony Towns, Esq. (consumer member of the Board and the panel presiding officer), Dr. Cheryl Williams, and Dr. John J. Lynch. John Greenhaugh, Esq. served as attorney-advisor to the panel.
[2] Ms. Zaniel, Esq., is a Senior Assistant Attorney General in the Civil Enforcement Division of the Office of the Attorney General.

The Notice of Intent to Take Disciplinary Aetion (the "NOI") containing tlie Charge and specifications against the Respondent had been signed by the Chairperson for the Board of Medicine on February 13, 2008.

The Charge in the NOI charged the Respondent with a violation of D.C. Official Code § 3-1210.01 (2001) in that the Respondent practieed medicine without a license. Specifically, the Charge as set forth in Specifications A through I charged the Respondent with practicing medicine without a lieense on various dates between Novemnber 7, 2007 and December 7, 2007. Each Specification represented a different date that the Respondent was charged with seeing medical patients during that time framc.

Additionally, each Specification included the fact that on October 31, 2007 the Board had issued a Decision and Order of the Board that ordered the Respondent's license to be suspended on the effective date of thc Order, and that said licensc was to remain suspended for a period of one (1) year. This prior Final Order was the result of action by the Board on another NOI for which a hearing was held on Junc 27, 2007 where the Respondent was present and represented hy counseI.

The presiding member of the panel admitted the eurrent NOI into evidence without objection by Respondent's counsel.[4]

Evidence

Presentation by the Government

Prior to proeeeding with the government's case, Ms. Zaniel and Respondent's counsel stipulated to the introduction into evidence of the Board's Order dated October

[3] John Riely, Esq practices at 4405 East-West highway, Suite 601, Bethesda, Maryland 20814.
[4] See page 7 of the transcript. The NOI is hereby incorporated by reference.

31, 2007.[5] Ms. Zaniel then called Mr. James Granger.[6] Mr. Granger was sworn and testified. Mr. Granger had requested an investigation concerning the potential that the Respondent was practicing medicine without a license. Mr. Granger caused the investigation to be initiated because of a letter he received from an "MC" of the Green Door who advised by a telephone call on December 18, 2007 and by letter that the Respondent was working at the Green Door from January 2007 to the present.[7] Mr. Granger had requested that the investigator focus on patient records at the Green Door for the period in question.

The Government then called Ms. Sherry Stevenson to the stand. Ms. Stevenson was sworn and testified substantially as follows: She is employed by the Green Door, which is a core service agency (CSA) in the District of Columbia. It is located in the District. Ms. Stevenson has been told that Green Door is "in the DMH, Department of Mental Health."[8] Ms. Stevenson is the clinic office manager. Her responsibilities include making sure the doctors get their schedule and that the doctors are aware of what patients are in the front waiting area. Ms. Stevenson sees the patients first as they arrive and makes sure they sign in. She knows the Respondent and testified that he was employed by the Green Door from January 2007 until December 2007. The Respondent was on the staff on Wednesdays and Fridays. Every Wednesday and Friday she would give the Respondent his daily schedule.

[5] See page 12, transcript. The Order of October 31, 2007 is hereby incorporated by reference.
[6] Mr. James Granger is the Executive Director for the D.C. Board of Medicine.
[7] The "present" referred to early December 2007. The letter from the Green Door was accepted into evidence as Exhibit 4 without objection. See transcript, page 16.
[8] Transcript, page 22.

Ms. Stevenson went through the relevant pages of the daily log[9] and testified that the Respondent saw patients on November 7, 2007, and November 9th, 14th, 16th, 21st, 23d, 28th, 30th and on his last day, December 7, 2007.[10]

On cross-examination Ms. Stevenson testified that the Respondent last saw patients on December 7, 2007 and that he has not seen patients nor been back to the office since that date. Ms. Stevenson testified that the Respondent had left on vacation after December 7, 2007 and never returned to work. To her knowledge he did not see patients after that date at the Green Door. Ms. Stevenson stated that many of the patients seen by the Respondent were seeing him for prescription refills, although some patients were new. Most of the patients were Medicaid patients and were not billed for their visits. If they had co-pays, as if they were insured by Medicare, then they would be billed by Green Door. But the witness emphasized several times that she did not work in billing and was not familiar with the billing codes or the billing practices. The prescriptions were filled at a pharmacy by the patient, not at the Green Door. Green Door would on occasion fax the prescription to a pharmacy for the patient.

On re-direct examination Ms. Stevenson went through the log book and ascertained that of the patients the Respondent saw during the period November 7, 2007 through December 7, 2007, five (5) of the patients were new patients.

In response to questions by panel members Ms. Stevenson testified that the Green Door fell "under the Department of Mental Health"[11] as a core service agency and that Green Door bills the District of Columbia Department of Mental Health for some of the

[9] The daily log was admitted into evidence as Government Exhibit # 3 with no objection by Respondent's counsel. Page 35 of transcript.
[10] The log is hereby incorporated by reference. It shows that the Respondent saw somewhere between 5 and 10 patents a day on the typical day.
[11] Transcript, page 45

services they provide. However, in response to a panel member question: "To your knowledge, are you all Federal employees", the witness stated, "No".[12]

The Government next called Mr. Andres Marquez-Lara to the stand. Mr. Marquez-Lara was sworn and testified substantially as follows: Mr. Marquez-Lara is the Quality Improvement Coordinator and the Medical Records Administrator for Green Door. He testified that Green Door is certified by the Department of Mental Health as a core service agency. Mr. Marquez-Lara does frequent audits to insure that the quality of medical services provided is up to standards. He also does risk management and does follow-up on unusual incidents and runs various reports for the Clinical Director.

As the Medical Records Administrator he is in charge of the day-to-day operations of the medical records department. He supervises the staff. Pursuant to questions from the prosecutor, Mr. Marquez-Lara reviewed various medical records[13] provided to him by the prosecutor and testified that various patients were seen by the Respondent on November 7, 2007. Each record established the billable service for that patient, among other recordable information. From the records the witness stated that the Respondent saw ten (10) patients on November 7, 2007. Government counsel and Respondent's counsel stipulated that the number of patients charged in each Specification as having been seen by the Respondent matches with the number of records produced for that date and that the records, in fact, show that the Respondent saw those patients on those dates.[14]

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[12] Ibid, page 46.
[13] The medical records are kept on a Green Door Clinical Record Form. The Government labeled the first one Exhibit # 5 and it was accepted into evidence without objection. Transcript, pages 60-61.
[14] Transcript, page 63.

On cross-examination Mr. Marquez-Lara testified that the Green Door had been certified by local authorities at the District of Columbia Department of Mental Health as a result of an audit, but to his knowledge there had not been a federal audit while he had been there. He was not certain where the funding came from for Green Door's activities

The Government counsel next called Ms. Sharon Lee Miller to the stand. She was sworn and testified substantially as follows: She is the Clinical Director of the Green Door Mental Health Agency. The ageney is an outpatient nonprofit mental health agency and the primary population is people who have a serious mental illness. Green Door provides case management and psychiatric services. They are certified every two years by the Department of Mental Health to provide services through them. Ms. Miller testified that she had been employed by Green Door for five (5) years in September 2008 and had been the clinical director since she had been hired. Her supervisor is the Deputy Director of the agency. She is in charge when he is not there.

She knows the Respondent as a contraet psychiatrist at Green Door. It was her understanding that according to the Department of Mental Health standards, a psychiatrist has to have a license. He or she has to be a licensed medical doctor. That means the individual must have a District of Columbia medieal license. Her clinic bills the Distriet of Columbia Medicaid program as part of the billing at Green Door. The Department of Mental Health passes the bills on to Medicaid. During the time from November 7, 2007 until December 7, 2007 the Respondent was paid for his services at the Green Door.

There did come a time when Green Door learned that the Respondent was practicing at Green Door without a license. The staff had reeeived training on checking the license status of their employees so that the agency could be prepared for an audit by

Medicaid. When the staff practiced using the website, the name of the Respondent came up as not having a license.

On cross-examination Ms. Miller testified that she had some familiarity with billing. Medicaid is both a state or District program and a federal program. Medicaid reviews the bills and then sends the checks directly to Green Door. That is the current procedure. The former procedure was that the bills went to the Department of Mental Health and they paid Green Door directly form their funds. Then they billed it to Medicaid who then reimbursed them. Medicaid has regulatory parameters under which Green Door operates. They are under the Mental Health Rehabilitation Services. Green Door bills through the Department of Mental Health and must follow Medicaid parameters on how to provide services and how to write up the medical notes. Some patients have Medicare and Green Door will bill Medicare. Most patients are covered by either Medicaid or Medicare.

On re-direct examination Ms. Miller testified that Green Door was not a federal agency. Additionally, to the witnesses' knowledge there was no exemption from the requirement of holding a District of Columbia license with respect to any of the health care practitioners in Green Door. Ms. Miller testified that she is responsible for hiring psychiatrists, and that applicants must provide to her a District of Columbia medical license before they are hired. During the time in question, between November 7 and December 7, 2007, payment for services at Green Door was coming directly from the Department of Mental Health. Further, the Department of Mental Health covers services that might not otherwise be reimbursable under Medicare or Medicaid. A certain

percentage of funds originates from the Department from what is called local dollars paid directly out of the District.

The Government put into evidence without objection those exhibits that were stipulated to by Respondent's counsel.[15] Thereafter the Government counsel rested.

Presentation by the Respondent

Prior to presenting his case, Counsel for the Respondent made a Motion for a Directed Verdict. Counsel's argument was that the facts in the record were insufficient to meet the Government's burden of proof.[16] The Presiding Officer denied the Motion for a Directed Verdict.[17]

Counsel for the Respondent then called the Respondent to the stand. After being sworn he testified substantially as follows: He is 48 years old and will be 49 in July. He has a speech impediment that causes him to stutter. Regarding the status of his medical licenses in the various jurisdictions in which he was licensed, in the State of Maryland his medical license is currently revoked but that is under appeal because he was denied his right to a hearing. In Virginia his medical license is suspended and in the District of Columbia his license is also suspended.

He began to work at the Green Door on a part-time basis in 2004 and began to work there on a regular basis in 2007. He saw mental health patients, did initial evaluations, medication management and made sure the patients were stable. The Respondent affirmed the records introduced by the Government as to the number of

[15] Government Exhibits 7 – 13 were admitted into evidence showing the patients seen by the Respondent during the period of November 7 – December 7, 2007. They are incorporated by reference.
[16] Transcript, pages 106-7.
[17] Ibid, page 107. The panel ruled that the Government had put on a prima facie case and denied the motion.

patients seen by the Respondent during the time charged as he recognized his handwriting on the records.

The Respondent also recalled that he learned his license had been revoked when he received a copy of the Board final order suspending his license. The Order is dated October 31, 2007. He did not receive a copy of this Order until sometime in December 2007. The Respondent testified that he filed an appeal of the Order right after the hearing and that the appeal is pending before the appeal courts. At the time the District suspended his District medical license he still had a valid Virginia license. The Respondent's Virginia medical license was introduced into evidence without objection.[18]

By letter dated November 29, 2007 the Respondent was notified by the Director of the Department of Health Professions for the Commonwealth of Virginia that his Virginia license had been indefinitely suspended. He stated that he probably received this letter in the first or second week of December, 2007. As soon as he received this letter he stopped practicing medicine at the Green Door. Prior to receiving the letter from the Virginia authorities, he "wasn't too sure about what was going on."[19] He did not receive the Order from the District suspending his license "until the middle of December."[20] The Respondent felt he could practice at the Green Door using his Virginia license. He did not discuss the situation with his supervisors at the Green Door and he did not attempt to seek clarification from anyone.[21]

On cross-examination the Respondent was shown Government Exhibit # 1 that shows that one of his attorneys signed for the District Order on November 2, 2007. The

[18] Respondent's Exhibit # 1, Transcript, page 118.
[19] Transcript, page 122.
[20] Ibid.
[21] Ibid, page 124.

Exhibit also shows that a copy was sent to his other counsel. The Exhibit was dated October 31, 2007, the same date as the effective date of the Order. The Respondent maintained that neither of his counsel told him about the District Order until some time in December 2007, and did so then only because he went to their offices to "let them know I was traveling and they handed me those documents."[22]

The Respondent testified that he appealed the October 31, 2007 Order but that he did so when it was only a recommended order. He appealed the recommended decision to the District of Columbia Court of Appeals. The attorney who helped him with the appeal was his current attorney, John Riely, Esq. The Respondent was aware from the recommended deeision that he appealed that his lieense was to be suspended. In his appeal he was also asking the Court of Appeals for a stay of the decision. He did not think he obtained the stay and that the appeal is still pending. He reiterated that the appeal was based on his having been suspended.[23] (Emphasis added.)

When asked by Government counsel if he thought his Virginia license allowed him to practice in the Distriet of Columbia, the Respondent answered "Now that I know, no." When asked again, Did you think that in November of 2007 that you could work in the District of Columbia with a Virginia license, the Respondent answered, "As of that time, I didn't know my District of Columbia license had been effcetively suspended. Yes."[24]

In response to questions from the panel members, the Respondent testified that he saw the recommended decision of the Board of Medicine "sometime in November" "or

[22] Ibid, page 131.
[23] Ibid, page 136.
[24] Ibid, page 140. Both quotations in this paragraph come from the same page in the transcript.

October."[25] He further stated that he understood it when he saw it and that he brought it to his current attorney to file an appeal because he understood it. Respondent testified that the appeal to the D.C. Court of Appeals had "two prongs"[26], "against the suspension and then for a stay of the order."[27] Respondent also testified that he did not recall whether any of his attorneys had filed anything with the Board of Medicine in response to the recommended order.[28] Respondent's counsel introduced a copy of the appeal to the Court of Appeals, Respondent's Exhibit # 3, and the date stamp on it from the Court of Appeals was October 25, 2007.[29] The Respondent testified that the final order of suspension, dated October 31, 2007, was given to him by the Board of Medicine for pleading guilty to Medicaid fraud in a criminal proceeding in Maryland.[30] The District's suspension of his license was in response to the suspension in Maryland.

Upon the conclusion of questions from members of the panel, the Respondent rested his case.

Rebuttal By The Government

In rebuttal the Government counsel recalled Mr. James Granger to the stand. He was reminded he was still under oath and he testified substantially as follows: The recommended decision of the Board was dated September 26, 2007. It was sent to the Respondent's counsel at that time, Ms. Van Lowe, Esq. and a copy was sent to the

[25] Ibid, page 141.
[26] Ibid, page 143.
[27] Ibid.
[28] Ibid, page 145.
[29] Ibid, page 143. The appeal to the D.C. Court of Appeals is hereby incorporated by reference.
[30] Ibid, page 149.

Government counscl. The cover letter that sent the recommended order to counsel of record, Ms. Van Lowe, Esq., states that per 17 DCMR Chapter 41 section 4113.7, Ms. Lowe has ten (10) days from receipt of the reeommended order to file any exceptions that she may have and the Board is required by regulations to consider sueh exceptions as may be presented timely prior to issuing a final order. Mr. Granger testified that the Order was sent by registered mail and that the "green card" indicates that it was received by her on October 1, 2007. Subsequent to that date, the Board did receive a response from a Roland Walker, Esq. The response was dated October 17, 2007. Mr. Granger testified that the Final Order was sent to both Ms. Van Lowe and to Mr. Walker.

Pursuant to questions from Respondent's counsel, Mr. Granger stated that no exceptions were taken to the recommended decision by Respondent's counsel and when no exeeptions to the recommendations were received by the Board of Medicine, the Board on October 31st made a determination that the recommended order would become a final decision. Mr. Granger believed that the appeal to the D.C. Court of Appeals arrived at his office prior to the finalizing of the Final Order on October 31, 2007.[31]

Conclusions of Law

The applieable provisions of District law inelude the following:

D.C. Official Code § 3-1210.01 (2001) provides:

> "No person shall practice, attempt to practice, or offer to practiee a health occupation licensed or regulated under this chapter in the District unless currently lieensed, or exempted from licensing, under this chapter."

[31] Ibid, page 165.

D.C. Official Code § 3-1205.14 (c) (2) provides authority for the Board to impose the following sanctions on licensees that the Board has found committed an act described in subsection (a)[32]: "The board may: Revoke or suspend the license of any licensee;..."

District of Columbia Municipal Regulation § 4011.1 states: "A health professional whose license...has been revoked...shall be ineligible to apply for reinstatement for a period of one (1) year from the date of the revocation or denial, unless otherwise provided in the board order of revocation..."[33]

Findings of Fact

On June 25, 2008 following the Hearing, the Panel in executive session diseussed the documentary evidence, the testimony of Dr. Udebiuwa and the testimony of the Government's witnesses. The Panel found that there was jurisdiction over the Respondent and over the offenses eharged. The Panel did find unanimously that the Charge I and its Specifications had been proven by a preponderance of thc evidcnee. The Panel further found, and the Board adopts, the following facts and conclusions of law:

(1) The Respondent's medical license was suspended on October 31, 2007 by the District of Columbia Board of Medicinc.

(2) The Board's Final Order, dated Octobcr 31, 2007, was sent to Respondent's counsel of rccord, Ms. Van Lowe, Esq., on Octobcr 31, 2007, as well as to Mr.

[32] D.C. Official Code § 3-1205.14 (a) (24) states that a licensee may be disciplined if they violate "any provision of this ehapter or rules and regulations issued pursuant to this chapter;..." (emphasis added)
[33] See also Edurna Eni Nmagu v. District of Columbia Department of Health, D.C. Court of Appeals, No. 06-AA-552, March 12, 2007.

Roland, Esq. Ms. Van Lowe received her copy of the Final Order on November 2, 2007.[34]

(3) The Board's reeommended order was sent to counsel of rccord, Ms. Van Lowe, on or after September 26, 2007, and was received by Ms. Van Lowe on October 1, 2007.[35]

(4) Ms. Van Lowe did not submit any response to the Board as a result of receiving the recommended order.

(5) On Oetober 17, 2007, the Board rceeived a communication from a Mr. Roland Walker, Esq.

(6) The Respondent, through his current counsel, elected to appeal the recommendcd order to the D.C. Court of Appeals. The appeal was date stamped by the Clerk for the D.C. Court of Appeals on October 25, 2007.

(7) At the time Respondent went through the time and expense of appealing the recommended order, he requestcd from the D.C. Court of Appeals both a stay of the decision and an appeal of the decision. A preponderance of the evidence leads the Panel to conclude, and this position is adopted by the Board, that at the time of the appeal by Respondent of the Board's recommended decision to the D.C. Court of Appeals, the Respondent was of the belief that his medical license either was or was about to be suspended, and he thus elected to appeal the Order before further time elapsed. There is insufficient evidence for the Board to conclude that at the time Respondent appealed the Board's recommended decision or subsequent to that time, that the Respondent was

[34] See GE # 1; Transcript, page 160.
[35] Transcript, page 158.

treating the notice by the Board of what may happen to his license in the future as anything other than a certainty. His supposed lack of follow-up with any of his counsel until he visited two of them in December, despite a pending appeal and with knowledge of what the recommended decision of the Board was, was not credible to the Panel or the Board.

(8) The Board finds that the Respondent's attorney of record, Ms. Van Lowe, Esq. was notified of the decision of the Board by Final Order on November 2, 2007. This is five (5) days prior to the Respondent seeing clients on November 7, 2007, the first date that he was charged with seeing patients after the suspension of his license was communicated to his counsel. The Board does not find credible the testimony of the Respondent that he was only informed by Ms. Van Lowe, Esq. of the Final Order in December when he went to visit her at her office, or that Mr. Riely, Esq. who filed the appeal with the Court of Appeals on October 25, 2007, or Mr. Walker, Esq. who responded belatedly to the Board of Medicine on October 17, 2007 in response to the recommended order, did not inform him prior to November 7, 2007.[36] This Panel also notes the conclusion by the Board in the prior Order dated October 31, 2007, to wit: "His testimony at the most recent hearing for the offense now before us indicates ...a refusal to accept any responsibility for any of the three incidents of misconduct which led to Orders by this Board"[37] Further, the Board in that Order also noted, "...the

[36] The Panel and the Board as a whole both note the absence of any evidence from any of the named counsel to corroborate the Respondent's account regarding notification of the Final Order. Such evidence is not needed, and certainly no evidentiary burden of any kind is placed on Respondent, but the Respondent's general demeanor and overall credibility on the issue of notice were insufficient to rebut the preponderance of evidence introduced by the Government counsel.

[37] Final Order of this Board, dated October 31, 2007, page 13.

Respondent in his most recent testimony did not take responsibility for that failure to comply, assigning that failure also to his former attorney."[38]

(9) The Respondent continued to see patients and to practice medicine upon them beginning November 7, 2007 and on every date set forth in specifications B through I of Charge I.

(10) The Respondent's position that at the time he practiced medicine without a license that he was not aware his license was suspended is countered by a preponderance of the evidence and by his demeanor while testifying. The Panel and the Board find the Respondent's supposed lack of knowledge under the circumstances that his D.C. medical license had been suspended not reasonable and against the greater weight of the evidence.

(11) The Respondent, while practicing medicine without a D.C. license, was not a federal employee and was not working for a federal agency. He was at all times subject to the rules and regulations of the District of Columbia and the Board of Medicine. There existed no exemption for him to practice medicine within the District of Columbia without a District medical license.

(12) The fact that he may have been licensed in the Commonwealth of Virginia to practice medicine in that jurisdiction while in fact practicing in the District without a District medical license is not relevant. Having a portion of your services billed to a particular federal agency is not relevant for purposes of having an exemption from local licensure. Respondent's counsel has cited no authority for such a position, and it is not relevant in the nature of a "good

[38] Ibid, page 14. The Board's conclusion was in the context of the Respondent's failure to comply with previous orders of this Board.

faith" defense when the Respondent testified that he was not aware of what provider was billed for what serviees.[39]

(13) Government Exhibit # 1, the Deeision and Order of the Board dated October 31, 2007, indieates that the Respondent at that time had been before this Board "on three separate occasions for three separate incidents of serious misconduct within seven (7) years."[40] This now makes four (4) separate incidents of serious misconduct. The Board also recognizes that the prior Order dated October 31, 2007 indicates that the Respondent may not have complied in all respects with a prior Order of this Board.[41]

Decision of the Board

In light of the preceding Conclusions of Law and Findings of Fact, the Panel by unanimous vote recommended the following proposed Order to the Board of Medicine[42], and the Board of Medicine at its regularly scheduled meeting on July 30, 2008, after being briefed on the case by the Panel members and after a full discussion in executive session, voted unanimously to adopt the recommended Order in whole as the Recommended Order of the Board of Medicine.

Following the procedures outlined in DCMR § 4113.7, the Recommended Order was sent to the eounsel for Respondent by certified mail under cover letter dated July 31, 2008 by the Executive Director for the Board of Medicine. Respondent's counsel

[39] Ibid, page 152.
[40] Exhibit # 1, page 13.
[41] Ibid.
[42] See D.C. Municipal Regulation § 4113.4 through 4113.8 for the procedure used when a panel hears the case.

received the certified mail on August 6, 2008. From the date of receipt, the Respondent had ten (10) days to submit comments pertaining to the Board's Recommended Order for consideration by the Board. The Board has received no comments from the Respondent or his counsel as of August 21, 2008.

The Board thus issues the following Order:

ORDER

Based upon the aforementioned, it is hereby **ORDERED** that Oparaugo I. Udebiuwa, M.D.-

- Shall have his license to practice medicine **REVOKED** on the effective date of this Order, and said license shall **REMAIN REVOKED** for a period of **THREE (3) YEARS** from the effective date of this Order; and further, the Respondent
- May petition the Board after three (3) years from the effective date of this Order to have his medical license reinstated, and as part of that submission SHALL submit to the Board of Medicine a Fitness-to-Practice letter from a Board-approved psychiatrist who is approved in advance, and SHALL show compliance with all prior Orders issued by this Board concerning the Respondent.

8/21/08
Date

Frederick C. Finelli, M.D., J.D.
Chairperson
Board of Medicine

THIS FINAL ORDER IS A PUBLIC DOCUMENT AND MAY BE FILED WITH THE NATIONAL PRACTITIONER'S DATA BANK AND ELSEWHERE AS APPROPRIATE.

Judicial and Administrative Review
Of Actions of the Board

Pursuant to D.C. Official Code § 3-1205.20 (2001):

> 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 § 2-510.

Pursuant to D.C. Court of Appeals Rule 15(a):

> Review of orders and decisions of any agency shall be obtained by filing with the clerk of this court a petition for review within thirty days after the notice is given.