

**BEFORE THE BOARD OF MEDICAL LICENSURE AND DISCIPLINE
OF THE STATE OF DELAWARE**

**IN THE MATTER OF:
COMPLAINT AGAINST
YVETTE K. BAKER, M.D.**

(License No. C1-0006698)

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FINAL BOARD ORDER

**Complaint Nos.: 10-108-09, 10-83-10
10-32-11**

PUBLIC ORDER

Pursuant to 29 *Del. C.* § 8735(v)(1)d a properly noticed hearing was conducted before a hearing officer to consider the above referenced complaints filed by the State of Delaware against Yvette K. Baker, M.D. with the Board of Medical Licensure and Discipline. The hearing officer has submitted the attached Recommendation in which the hearing officer found as a matter of fact and law that the that the above-captioned complaint numbers 10-108-09, 10-83-10 and 10-32-11 have been shown by a preponderance of the evidence presented to establish unprofessional conduct by Yvette K. Baker, M.D. in violation of the Medical Practice Act.

The Board is bound by the findings of fact made by the hearing officer. 29 *Del. C.* § 8735(v)(1)d. However, the Board may reject, affirm or modify the hearing officer's conclusions of law and recommended penalty.

The parties were given 20 days from the date of the hearing officer's proposed order to submit written exceptions, comments and arguments concerning the conclusions of law and recommended penalty. Dr. Baker submitted exceptions disputing twelve of the allegations set forth in the State's Complaints against her. In her exceptions, Dr. Baker contended the following: that she did nothing illegal when she prescribed her staff and husband various medications; that her office manager, to whom she was prescribing narcotics and who subsequently died, had numerous medical conditions; that she did not make misrepresentation to Medicaid; that she did not violate the Board regulations regarding prescribing controlled

substances; and that she only prescribed medications for their proper purpose. Finally, Dr. Baker claimed that the only basis for her guilty plea to four counts of health care fraud was answering “no” to the question “is there any reason why you should be excluded from seeing Medicaid patients?” on a Medicaid application.

The Board deliberated on the hearing officer’s findings of fact, and recommended conclusions of law and discipline as well as Dr. Baker’s exceptions thereto at its July 23, 2013 meeting. The Board did not find Dr. Baker’s exceptions to the complaints persuasive. The Board found that, as a psychiatrist, there was no reason for Dr. Baker to be prescribing high numbers of narcotic pain medications, and that Dr. Baker’s exceptions to the hearing officer recommendations indicate that she has yet to recognize the seriousness of her actions, despite being convicted of numerous felonies. Thus, the Board moved to affirm the conclusions of law and implement the recommended discipline against Dr. Baker.

In this case, the hearing officer found that Dr. Baker was arrested on 64 felony charges and pled guilty to six criminal charges, including health care fraud, obtaining benefits by false representation and making a false statement. Dr. Baker did not testify at the hearing before the hearing officer; however, the State was able to establish that she committed these crimes by submitting into evidence certified copies of her criminal background check and the Court of Common Pleas docket entries. Under Delaware law, certified copies of public documents fall under the public record exception to hearsay. D.R.E. 803(8); *Trawick v. State*, 845 A. 2d 505 (Del. 2004).

Based on the foregoing, the hearing officer concluded as a matter of law that Dr. Baker committed a crime substantially related to the practice of medicine under Board Rule 15.3.55¹

¹ Formerly Board Rule 28.3.60.

which deems “health care fraud” to be such a crime. As such, the hearing officer concluded that Dr. Baker violated 24 *Del. C.* § 1731(b)(1), (b)(2) and (b)(3). Under 24 *Del. C.* § 1731, a licensee may be disciplined by the Board for unprofessional conduct. 24 *Del. C.* § 1731(b)(1) defines unprofessional conduct as the “use of any false, fraudulent, or forged statement or document or the use of any fraudulent, deceitful, dishonest, or unethical practice in connection with ... the practice of medicine” The hearing officer concluded that the crime of which Dr. Baker was convicted clearly constituted fraudulent practice in connection with the practice of medicine. Under 24 *Del. C.* § 1731(b)(2) unprofessional conduct is defined as “[c]onduct that would constitute a crime substantially related to the practice of medicine” thus this violation was established by the conclusion that Dr. Baker committed a crime substantially related to the practice of medicine under Board Rule 15.3.55. Finally, under 24 *Del. C.* § 1731(b)(3), unprofessional conduct is defined as “[a]ny dishonorable, unethical, or other conduct likely to deceive, defraud, or harm the public.” The hearing officer concluded that Dr. Baker violated this statute when she committed a crime involving presenting fraudulent health care claims.

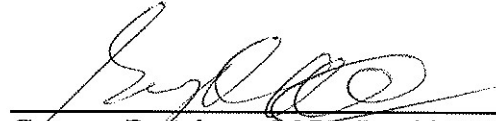
The hearing officer recommended that Dr. Baker’s expired license be permanently revoked.

NOW THEREFORE, by unanimous vote of the undersigned members of the Board of Medical Licensure and Discipline, the Board enters the following disciplinary Order:

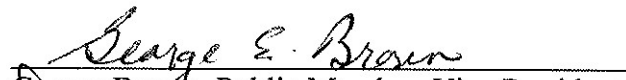
1. The medical license issued by the Board of Medical Licensure and Discipline to Yvette K. Baker, M.D. is hereby permanently revoked;
2. Pursuant to 24 *Del. C.* § 1735 a copy of this Order shall be served personally or by certified mail, return receipt requested, upon Yvette K. Baker, M.D.. This is a public disciplinary action reportable to the national practitioner databank pursuant to 24 *Del. C.* § 1734(i). A copy of the Hearing Officer’s Recommendation shall be attached hereto and is incorporated herein.

IT IS SO ORDERED this 10th September day of ~~August~~, 2013.


BOARD OF MEDICAL LICENSURE AND DISCIPLINE



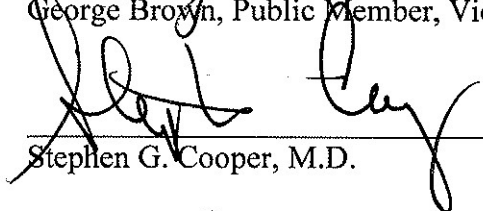
Gregory D. Adams, M.D., President




George Brown, Public Member, Vice-President



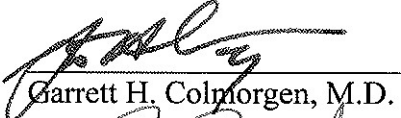
Joseph Parise, D.O., Secretary



Stephen G. Cooper, M.D.



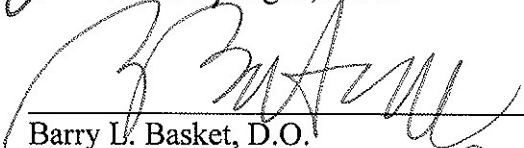
Raymond L. Moore, Sr., Public Member



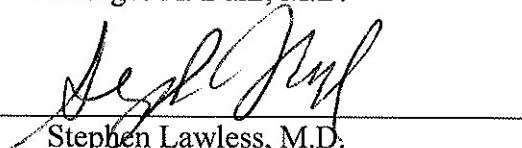
Garrett H. Colmorgen, M.D.



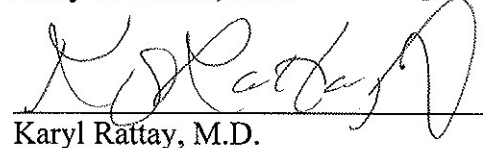
Georges A. Dahr, M.D.



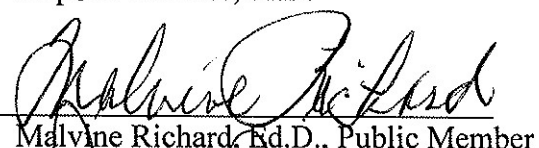
Barry L. Basket, D.O.



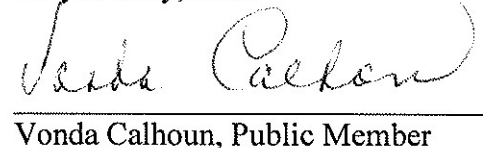
Stephen Lawless, M.D.



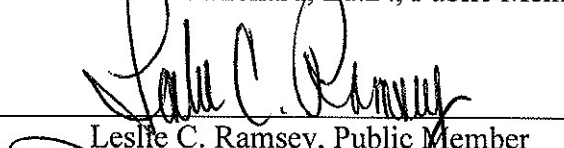
Karyl Rattay, M.D.



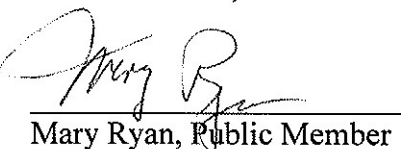
Malvine Richard, Ed.D., Public Member



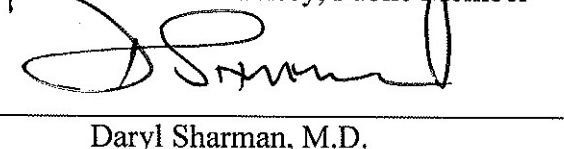
Vonda Calhoun, Public Member



Leslie C. Ramsey, Public Member



Mary Ryan, Public Member



Daryl Sharman, M.D.

Date Mailed: 09/18/2013

APPEAL RIGHTS

29 *Del. C.* §10142 provides:

(a) Any party against whom a case decision has been decided may appeal such decision to the Court.

(b) The appeal shall be filed within 30 days of the day the notice of the decision was mailed.

(c) The appeal shall be on the record without a trial de novo. If the Court determines that the record is insufficient for its review, it shall remand the case to the agency for further proceedings on the record.

(d) The court, when factual determinations are at issue, shall take due account of the experience and specialized competence of the agency and of the purposes of the basic law under which the agency has acted. The Court's review, in the absence of actual fraud, shall be limited to a determination of whether the agency's decision was supported by substantial evidence on the record before the agency.

Date mailed: 9/18/2013

**BEFORE THE DELAWARE BOARD OF MEDICAL LICENSURE AND
DISCIPLINE**

In the Matter of:)	
)	Case Nos. 10-108-09
Yvette K. Baker, M.D.)	10-83-10
Lic. No. C1-0006698)	10-32-11

RECOMMENDATION OF CHIEF HEARING OFFICER

Nature of the Proceedings

The State of Delaware, by and through the Department of Justice, has filed a professional complaint and second amended complaint against Yvette K. Baker, M.D., a licensee of the Board of Medical Licensure and Discipline. The second amended complaint alleges that Dr. Baker engaged in the following misconduct during the period 2008-2010:

1. That Dr. Baker prescribed controlled substances for an office manager and members of the manager's family as well as other employees and non-employees who worked in her office without maintaining sufficient medical records regarding those individuals;
2. That Dr. Baker prescribed a variety of controlled substances for her spouse while he was being prescribed such medications by 11 other physicians;
3. That Dr. Baker's office manager was also being prescribed controlled substances by five other physicians, and that the manager died nine days after her hospitalization and diagnosis of hypoventilation from medication overuse;
4. That Dr. Baker made misrepresentations to the Delaware Medication Assistance Program regarding her prescribing of controlled substances for a patient/employee;
5. That Dr. Baker left records for 13 patients unsecured in her office and in view of other patients;
6. That while practicing medicine while her legal ability to prescribe certain controlled substances had been withdrawn pursuant to a consented agreement approved by order of the Board, and while she had agreed to an order

imposing other restrictions on her practice, including the surrender of her State and Federal Controlled Substance Registrations, Dr. Baker prescribed controlled substances for a patient;

7. That since 2009 Dr. Baker has violated various provisions of the Board's regulation pertaining to the use of controlled substances for the treatment of pain;
8. That since 2008 Dr. Baker has ignored concerns raised by the Division of Medicaid and Medical Assistance (DMMA) concerning her simultaneous prescription of Xanax and Klonopin for the same patients;
9. That Dr. Baker has ignored concerns raised by the DMMA concerning her failure to order lab tests to determine if medications prescribed by her were having deleterious effects;
10. That Dr. Baker continued to prescribe opiates for a patient whose screen indicated that she was not taking such medications;
11. That Dr. Baker prescribed Adderall for certain patients and patient/employees for other than proper medical reasons and for other reasons in violation of certain regulations of the Board; and
12. That in October 2012 Dr. Baker pled guilty to four felony counts of health care fraud and two misdemeanor charges of making false statements.

The State has also filed a complaint and amended complaint with the Delaware Secretary of State and the Controlled Substance Advisory Committee. That complaint (hereinafter the "CSR complaint") seeks permanent revocation of Dr. Baker's Controlled Substances Registration as being inconsistent with the public interest pursuant to 16 *Del.C. Sec. 4734*. Many of the factual allegations in the CSR complaint mirror the factual allegations in the professional disciplinary complaint.

The State's attorney requested that the factual record in this hearing constitute the basis for a recommendation both to the Board of Medical Licensure and Discipline with regard to the discipline of Dr. Baker's license, and to the Secretary of State with regard to Dr. Baker's Controlled Substance Registration. That request was granted. A separate

recommendation flowing from this evidentiary hearing will be made to the Secretary in due course.

An open administrative hearing on the State's second amended complaint was convened on due notice at 10:15 a.m., April 10, 2013, in the offices of the Division of Professional Regulation, 861 Silver Lake Blvd., Dover DE. Barbara Gadbois, Deputy Attorney General, represented the State. Dr. Baker failed or refused to attend the hearing. (Her non-attendance is discussed below.) All witnesses testified under oath or affirmation. A registered court reporter was present who made a stenographic record of the proceedings. This is the recommendation of the undersigned hearing officer to the Board after due consideration of all relevant evidence.

Summary of the Evidence

The State first called Ms. Devashree Brittingham, a paralegal employed in the Administrative Hearing Unit of the Division of Professional Regulation. One of her duties is to schedule and prepare notices of hearings before Division hearing officers.

Ms. Brittingham testified that the notice of this hearing was mailed to Dr. Baker on March 18, 2013. A copy of the notice was admitted as State Exhibit 1 ("SX 1"). The notice was mailed to Dr. Baker at the last residential address which she had reported to the Board and to the Division as the place where she should receive official communications from the Board. Ms. Brittingham testified that licensees are required to continually update the Board data base with any changes in residential address. Ms. Brittingham located Dr. Baker's last reported residential address in that data base. She testified that she had again checked the data base on the day before the hearing, and Dr. Baker had not reported or entered any change.

The notice in this case provided Dr. Baker with the date, time, place and subject matter of the hearing. The notice informed Dr. Baker that the April 10 hearing would provide a factual record with respect to both the State's disciplinary complaint and the complaint seeking revocation of Dr. Baker's Controlled Substance Registration. SX 1.

The hearing notice was sent to Dr. Baker via First Class and certified mail. The certified mail copy of the notice was returned by the Postal Service to the Division on April 16, 2013 (after the hearing) with the notation "return to sender/unclaimed/unable to forward". The returned certified copy is attached to SX 1. The first class mailed copy sent to the same residential address was not returned to the Division as undeliverable. Since mailing the hearing notice to Dr. Baker on March 18, Ms. Brittingham had had no contact from Dr. Baker in any form.

Based on this sworn record, it was determined that the State had proved good and valid notice to Dr. Baker through service of SX 1 to her last reported physical residence by both First Class and certified mail. Though the certified mail copy of the hearing notice was returned to the Division as "unclaimed", the First Class mailing of SX 1 has not been returned to the Division by the Postal Service as undeliverable. Since the notice was prepared and mailed to Dr. Baker in the normal course of Division business, since the First Class notice has not been returned to the Division as undeliverable, and since Dr. Baker has not overcome the presumption of receipt under the "mailbox rule", it is presumed that she did receive timely notice of the hearing.

Post-Hearing Note: On April 25, 2013 Ms. Baker electronically mailed a letter to the undersigned. In the letter she states that she had not received the hearing notice "due to an incorrect address and two address changes...." Because of a planned surgery, she

asks if the hearing can be rescheduled to late June 2013. A copy of the letter has been entered into evidence as Respondent Exhibit 1 ("RX 1"). She adds that she does not now have a permanent residential address for purposes of receiving mail.

Because she claims no current residential address, I responded to Dr. Baker by email and informed her that the hearing had been held on April 10 because the State had proved actual service of the hearing notice, and because in her letter she admits that she had in fact received the First Class mailing of the notice. She was informed that a recommendation would be submitted to the Board based on that hearing record, and that, whether or not she agreed with the recommendation, she was free to present her arguments on notice to the Board after the recommendation is issued.

The State called no other witnesses and relies in this case primarily on certified court records. At the outset of the State's factual presentation, Ms. Gadbois noted that the State has made a number of claims of violations by Dr. Baker of the Medical Practice Act and regulations of the Board in the amended complaint. However, Ms. Gadbois argued that, since the State is in a position to prove six felony convictions for crimes substantially related to the practice of medicine, it is not necessary to prove all of those additional allegations. She further argued that, in any event, Dr. Baker is not permitted to have her license restored until she serves any sentence as ordered by the Court, has complied with all orders of the sentencing court, and five years have then elapsed.

The State offered a certified Superior Court criminal docket sheet which was admitted as SX 2. The docket sheet lists 62 separate charges against Dr. Baker for health care fraud, one charge of obtaining a benefit by false representation, and one charge of making a false statement. The docket sheet reflects that Dr. Baker entered a plea of

guilty on October 23, 2012 to four health care fraud charges as well as the obtaining benefit and false statement charges. In exchange, the State dismissed the remaining 58 charges against Dr. Baker *nolle prosequi*.

SX 3 is a certified copy of the Superior Court sentencing order which flowed from Dr. Baker's guilty pleas on October 23. In that order the Court accepted Dr. Baker's pleas. Dr. Baker was ordered sentenced to the custody of the Department of Correction on the first health care fraud guilty plea to ten years at supervision level 5 suspended after one year, followed by two years at supervision level 3, and three years at supervision level 1. On the remaining health care fraud convictions Dr. Baker was sentenced to three years at supervision level 5, suspended for one year at supervision level 3 and two years at supervision level 1. The two false statement charges resulted in sentences of one year at supervision level 5 suspended for one year at supervision level 1.

Ms. Gadbois noted that the October 23, 2012 sentencing order also states that on that date Dr. Baker consented to the "suspension of her license to practice medicine in the State of Delaware for the duration of her probationary period." SX 3 at 4. She also consented to the entry against her of a civil judgment in the amount of \$292,230.24, of which \$173,958 constituted restitution. *Id.* Dr. Baker further was ordered, *inter alia*, evaluated for substance abuse and mental health issues.

The October 2012 sentencing order was amended by a modified sentencing order of the same Court entered on December 14, 2012. A certified copy of that Order was admitted as SX 4. On December 14 Dr. Baker was ordered released from supervision level 5 and was ordered to begin her probationary period. The modified sentencing order reiterated Dr. Baker's restitution obligation of \$172,211.39 payable to

“DHSS/DMS/ARMS” and her obligation to the “DOJ Medicaid Fraud Control Unit” of \$1,746.85 . SX 4 at 8. The prosecutor represented that those amounts constitute funds unlawfully received by Dr. Baker as a result of her fraudulent conduct. The Court also reaffirmed the earlier imposed criminal fine of \$100,000.

The State also offered for the information of the hearing officer two documents printed from a State of Delaware website which reflect the current status of Dr. Baker’s medical license and Controlled Substance Registration. The documents show that Dr. Baker’s medical license was ordered suspended on July 27, 2010, and then expired on March 21, 2011. Her CSR was suspended on July 21, 2010, and expired on June 30, 2011.

Ms. Gadbois speculated that it is unlikely that Dr. Baker will be in a position to pay the aforementioned criminal fine and civil restitution order in the foreseeable future. Nonetheless, if Dr. Baker does satisfy those judgments, satisfies all other terms of the orders of the Superior Court, waits five years and then applies for license reinstatement, the Board should at this time permanently revoke her medical license. By filing and prosecuting the amended complaint, the State intends to make an official record of this matter so that any Board of Medical Licensure and Discipline as may be constituted in the future, and any Secretary of State then sitting, will be aware of the seriousness of Dr. Baker’s conduct and will be disinclined to reinstate her privilege to practice medicine and to prescribe controlled substances should she petition for restoration.

When asked by the hearing officer to further clarify the State’s position regarding discipline in this case, Ms. Gadbois argued that the State does not believe that the currently sitting Board and Secretary of State may bind the discretion of future Board

members or another Secretary who may then be in office. Hence, the current Board and Secretary should register their respective judgments regarding the seriousness of the findings in this case and revoke both the CSR and medical licenses formerly held by Dr. Baker and now in an expired status. The State intends to prove all which may be possible at this point to make a complete record so that future officials may make informed decisions in the event that Dr. Baker seeks reinstatement.

In addition, Ms. Gadbois referred to the provision in the sentencing order which reflects that in October 2012 Dr. Baker consented to the "continued suspension" of her medical license for the duration of her court-ordered probation. SX 3 at 4. To the extent that the sentence can be construed as an "order" that Dr. Baker's suspension continue, the State takes the position that the Superior Court does not have the lawful authority to bind the licensing or registration discretion of the Board or the Secretary.

In order that the record in this case be more complete, the State's Second Amended Complaint before the Board was admitted as SX 5. The Amended Complaint before the Secretary of State and Controlled Substance Advisory Committee was admitted as SX 6. After offering those exhibits, the State's attorney reiterated that the State contends that it is not necessary to prove the multiple claims in the two admitted complaints on the record of this case because of the six felony counts to which Dr. Baker has pled guilty, and under which she has now been sentenced.

Findings of Fact

The notice of this hearing provided Dr. Baker with the date, time, place and subject matter of this hearing. It was mailed to Dr. Baker by the Division of Professional Regulation by both certified and First Class mail in the normal course of Division

business. The notice was mailed to Dr. Baker at the last and most current residential address which she had provided to the Board in order to receive official communications. The certified copy of the hearing notice was returned to the Division as "unclaimed" and with the notation that the Postal Service was unable to forward it to another address. The First Class copy of the same hearing notice has not been returned to the Division as undeliverable. In correspondence to the undersigned hearing officer mailed and received after the hearing on April 10, Dr. Baker admits that she did in fact receive the First Class copy of the notice.

I find the following facts have been proven by a preponderance of the evidence, and are not refuted in the record of this case. Yvette K. Baker, M.D. is a licensee of the Board of Medical Licensure and Discipline. According to records maintained by the Board, Dr. Baker's medical license was initially issued on September 18, 2002. Her license was suspended on July 27, 2010, and subsequently expired on March 31, 2011.

Dr. Baker has also held a Controlled Substance Registration (CSR) which permits her to write prescriptions for controlled substances. Her CSR was initially issued on September 20, 2002. It was suspended on July 21, 2010. It expired on July 30, 2011.

On or about January 18, 2012, Dr. Baker was arrested on 64 felony charges of health care fraud, obtaining a benefit by false representation, and making a false statement. SX 2 at 2. On October 23, 2012, with the advice of counsel, Dr. Baker entered a plea of guilty on six of those felony charges and was sentenced by the Delaware Superior Court.

The sentence of the Court, as later amended in December 2012, imposed upon Dr. Baker a lengthy period of probation under the supervision of the Department of Corrections, substance abuse and mental health evaluations, and imposition of criminal fines, civil restitution, court fees and other assessments in the total amount of \$292,230.24. According to the terms of Dr. Baker's amended sentencing order as issued by the Superior Court, and unless that order is further amended, she will be on probation until approximately December 2017.

Dr. Baker did not attend the hearing and did not contest any of the facts set forth above.

Conclusions of Law

The legislature has adopted the Delaware Medical Practice Act, 24 *Del. C.* Ch. 17, in order to further the important public policy of ensuring the public health, safety and welfare is protected from the unprofessional, improper or unqualified practice of medicine. 24 *Del. C.* Sec. 1701. To that end the General Assembly has chartered the Board of Medical Licensure and Discipline and has authorized it to issue medical licenses, and to supervise and regulate the profession, and conduct disciplinary proceedings when complaints are filed against licensees. 24 *Del. C.* Sec. 1710(a). The Board has also been empowered to adopt rules in furtherance of its duty to regulate the profession of medicine. 24 *Del. C.* Sec. 1713(a)(12). These are all valid public purposes rationally related to the legitimate state purpose of protecting the public from those who would practice medicine unprofessionally or incompetently.

In its Second Amended Complaint, the State alleges that the acts of health care fraud and other related criminal acts to which Dr. Baker has pled guilty constitute violations of three provisions of the Medical Practice Act and a regulation of the Board.

The State first contends that Dr. Baker's criminally fraudulent acts constitute crimes which are substantially related to the practice of medicine under Bd. Reg. 28.3.60. SX 5 at 11. The Board has specifically been charged to adopt a regulation which sets forth those criminal acts which, in its discretion, the Board finds to be crimes which are "substantially related to the practice of medicine". 24 *Del. C. Sec. 1713(d)*. The Board has adopted such a list of crimes. Bd. Reg. 28.0 *et seq.* That list includes the crime of health care fraud in violation of 11 *Del. C. Sec. 913A*. Bd. Reg. 28.3.60.

The State has proved multiple convictions of the specific crime listed at Bd. Reg. 28.3.60. Though the issue was not argued in this hearing, I find that, as a matter of law, it is beyond peradventure that conducting one's licensed medical practice with fraudulent intent is clearly and substantially related to the practice of medicine. Dr. Baker's guilty pleas in October 2012 constitute a binding admission that she had done so. This regulatory violation has been proved by a preponderance of the evidence.

The State also contends that Dr. Baker's criminal convictions are evidence of violations of Sec. 1731(b)(1), (2) and 3) of the Act. Section 1731(b)(1) of the Act subjects a licensee to discipline for "unprofessional conduct" if the individual charged has "used any false, fraudulent...statement or document or the use of any fraudulent, deceitful, dishonest or unethical practice in connection with...the practice of medicine...."

I find that the State has proved a violation by Dr. Baker of Sec. 1731(b)(1) as a matter of law. In October 2012 Dr. Baker entered pleas of guilty to four charges of health care fraud in violation of 11 *Del. C. Sec.* 913A. That section in the Delaware Criminal Code prohibits the presentation of a fraudulent health care claim to any benefit program, or engaging in a pattern of presenting any such claim to a benefit program. The sort of conduct to which Dr. Baker pled guilty is clearly contemplated under Sec. 1731(b)(1). Presenting or causing to be presented a fraudulent health care claim is clearly the use of a fraudulent practice in connection with the practice of medicine. This statutory claim has been proved.

The State also alleges that Dr. Baker has acted “unprofessionally” under Sec. 1731(b)(2). That section of the Act provides for professional discipline if a licensee engages in conduct which would constitute a crime substantially related to the practice of medicine. I have already addressed the gist of this allegation, and incorporate my findings here.

Finally, the State alleges that Dr. Baker has violated Sec. 1731(b)(3). That section deems it unprofessional to engage in “dishonorable, unethical, or other conduct likely to deceive, defraud, or harm the public.” As noted above, an essential element of the crime of health care fraud is the submission or engaging in a pattern of presenting fraudulent health care claims. By her guilty plea in Superior Court, Dr. Baker has clearly engaged in conduct designed to defraud or deceive the public as well as health care benefit programs as a matter of law. This third statutory allegation has also been proved by the State.

A note on hearsay evidence and the "residuum" rule. A principal applied generally to administrative hearings such as this one is that, while "hearsay" evidence may be admitted when relevant, a final decision may not be based solely on hearsay. That legal principal has been engrafted on relevant Delaware law. 29 Del. C. Sec. 10161(h). The State's only "live" witness in this case was Ms. Brittingham. She testified as to notice of the hearing to Ms. Baker, and not on the substantive allegations in the amended complaint.

Most, if not all, of the allegations tried in this case concerned Dr. Baker's criminal proceedings in the Superior Court. The facts of those allegations, Dr. Baker's plea, and the sentencing of the Court were proved by the State through the submission of certified copies of official court records. Since they were properly certified by the Court and identified by the prosecutor in this case, they are admissible under the Delaware Rules of Evidence as self-authenticating exceptions to the hearsay rule as they are public records of the regularly conducted business of the courts. Del. Rules of Evid. 803(8). Hence, the "residuum" rule has been satisfied in this case.

The Board has adopted a series of guidelines designed to aid it in imposing discipline on its licensees in a consistent manner. Bd. Reg. 30.0 *et seq.* The Board has determined that criminal conduct reflects on a licensee's fitness and qualifications to practice medicine. Bd. Reg. 30.6. For the commission of crimes substantially related to the practice of medicine, the Board has determined that discipline should typically range from a 90-day suspension up to and including license suspension, with reinstatement only permitted upon a showing by the licensee that she has implemented "practice improvement". Bd. Reg. 30.6.1.

The Board has also determined that, in unique or exceptional cases, it may deviate from the disciplinary guidelines. Bd. Reg. 30.2. In determining the degree of discipline appropriate for a particular case, the Board has adopted a list of "aggravating" and "mitigating" factors.

I have reviewed the mitigating factors in Bd. Reg. 30.15 in the context of this case. As noted above, Dr. Baker did not appear at the hearing to offer any evidence in mitigation. Other than the additional allegations in the amended complaint not related to health care fraud (which remain solely allegations, and about which no findings are made here), no evidence was introduced of any prior disciplinary proceedings against Dr. Baker. Bd. Reg. 30.15.1. Perhaps Dr. Baker's guilty pleas in Superior Court could be interpreted as "consciousness of wrongful conduct". Bd. Reg. 30.15.5. I do not find other evidence of mitigation in this record.

The "aggravating" factors relating to discipline are found in Bd. Reg. 30.14. The lengthy list of criminal charges in this case indicate that there was a certain "frequency" in her criminal activity. Bd. Reg. 30.14.3. The amount of criminal fines and restitution ordered by the Court suggests the gravity of the misconduct. Bd. Reg. 30.14.4. Since Dr. Baker was required to repay a substantial amount in restitution by the Court, there is a clear inference that her conduct was motivated by selfishness. Bd. Reg. 30.14.6. She was motivated by criminal dishonesty by her admission. Bd. Reg. 30.14.7. SX 2 lists a substantial number of offenses. Bd. Reg. 30.14.8. By virtue of her guilty pleas, Dr. Baker admitted that she possessed the requisite criminal intent. Bd. Reg. 30.14.11. Health care fraud involves a certain level of abuse of trust that others have in the integrity of claims submitted by her or on her behalf. Bd. Reg. 30.14.12. The level of restitution

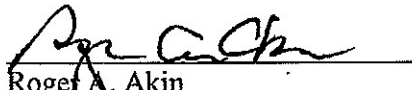
ordered by the court points to the severity of the financial injuries caused by her conduct. Bd. Reg. 30.14.16. The number of criminal charges leveled against Dr. Baker indicates a pattern of illegal conduct. Bd. Reg. 30.14.19, .20. The notoriety of a physician directly engaged in health care fraud was likely to bring ill repute upon the medical profession. Bd. Reg. 30.14.22.

In my opinion, and based on the record in this case, the aggravating factors substantially outweigh the mitigating factors in this case. If the Board sees fit to do so, deviation from the disciplinary guidelines in the direction of more substantial discipline is warranted here.

Due process has been afforded in these proceedings.

Recommendation

Based on the relevant evidence in this case and the findings of fact and conclusions of law set forth above, and finding good cause in this case to deviate from the Board's disciplinary guidelines, it is hereby recommended that the expired or lapsed medical license of Yvette K. Baker, M.D. be permanently revoked.


Roger A. Akin
Chief Hearing Officer

Dated: May 14, 2013

Any party to this proceeding shall have twenty (20) days from the date on which this recommendation was signed by the hearing officer in which to submit in writing to the Board of Medical Licensure and Discipline any exceptions, comments, or arguments concerning the conclusions of law and recommended penalty stated herein. 29 Del.C. §8735(v)(1)d.