

IN THE MATTER OF
JOSE L. LIZARDI, M.D.

Applicant

License Number: UNLICENSED

*** BEFORE THE**
*** MARYLAND STATE**
*** BOARD OF PHYSICIANS**
*** Case Number: 2223-0092**

*** * * * ***

ORDER OF DEFAULT

On May 5, 2023, Disciplinary Panel B of the Maryland State Board of Physicians (“Board”) issued a Notice of Intent to Deny Application for Initial Medical Licensure under the Maryland Medical Practice Act to Jose L. Lizardi, M.D. (“Dr. Lizardi” or “the Respondent”) under Md. Code Ann., Health Occ. § 14-205(b)(3)(i), alleging violations of Health Occ. § 14-404 for immoral and unprofessional conduct in the practice of medicine, *see* Health Occ. § 14-404(a)(3)(i), (ii); willfully making or filing a false report or record in the practice of medicine, *see* Health Occ. § 14-404(a)(11); being disciplined by a licensing, certifying, or disciplinary authority or convicted or disciplined by a court of any state or country for an act that would be grounds for disciplinary action, *see* Health Occ. § 14-404(a)(21); and violating any provision of the Health Occupations Article, Title 14, any rule or regulation adopted by the Board, or any State or federal law pertaining to the practice of medicine, *see* Health Occ. § 14-404(a)(43); and for lack of good moral character, which is a requirement of licensure, *see* Health Occ. § 14-307(b). With respect to Health Occ. § 14-404(a)(21), the acts in other jurisdictions that would be grounds for disciplinary action under Health Occ. § 14-404(a) include immoral and unprofessional conduct in the practice of medicine, *see* Health Occ. § 14-404(a)(3)(i), (ii); willfully

making or filing a false report or record in the practice of medicine, *see* Health Occ. § 14-404(a)(11); and violating any provision of the Health Occupations Article, Title 14, any rule or regulation adopted by the Board, or any State or federal law pertaining to the practice of medicine, *see* Health Occ. § 14-404(a)(43). The violations of law underlying Health Occ. § 14-404(a)(43) are Health Occ. § 1-212, which prohibits sexual misconduct; and Code of Maryland Regulations (COMAR) 10.32.17.02 and .03, pertaining to sexual, contact, sexual harassment, and sexual misconduct. On November 27, 2023, the case was referred to the Office of Administrative Hearings (“OAH”) for an evidentiary hearing.

On December 1, 2023, OAH sent a notice to the parties that informed Dr. Lizardi that a Scheduling Conference would be held on January 8, 2024, at 9:30 a.m., by video-conference. The scheduling conference notice was sent to Dr. Lizardi at the address he listed on his application for licensure by U.S. first-class mail. It was not returned as undeliverable. Dr. Lizardi did not request a postponement. On January 8, 2024, at 9:42 a.m., approximately twelve minutes after the scheduled start time, the Administrative Law Judge (“ALJ”) commenced the Scheduling Conference by video-conference. The administrative prosecutor appeared on behalf of the State. Dr. Lizardi did not appear, nor did anyone appear on his behalf. During the Scheduling Conference, a Prehearing Conference was scheduled for January 30, 2024, at 9:30 a.m.

On January 8, 2024, OAH sent a Notice of Remote Prehearing Conference to the parties that notified the parties that a Prehearing Conference would be held on January 30, 2024, at 9:30 a.m. The Notice of Prehearing Conference informed Dr. Lizardi that the

failure to appear or to give timely notice of his inability to appear at the Prehearing Conference could result in a decision against him. The Notice was mailed to Dr. Lizardi's address of record. The mailed copy was not returned as undeliverable. On January 18, 2024, the ALJ issued a Scheduling Conference Report and Order, which again, notified the parties that the Prehearing Conference would be held on January 30, 2024 at 9:30 a.m. by video-conference. The Scheduling Conference Report and Order was mailed to Dr. Lizardi at his address of record and was not returned as undeliverable.

On January 30, 2024, the ALJ held the Prehearing Conference by video-conference. The administrative prosecutors appeared on behalf of the State. Dr. Lizardi did not appear. At 9:47 a.m., after waiting more than fifteen minutes after the scheduled start time for Dr. Lizardi to appear, the ALJ commenced the Prehearing Conference. The State made a motion for default against Dr. Lizardi. The ALJ noted that Dr. Lizardi failed to appear. The ALJ further stated that Dr. Lizardi had not asked for a postponement nor communicated any difficulty accessing the video-conference platform. The ALJ noted that the notice was not returned by the U.S. Postal Service.

Under OAH's rules of procedure, "[i]f, after receiving proper notice as provided in Regulation .05C of this chapter, a party fails to attend or participate, either personally or through a representative, in a Prehearing Conference, hearing, or other stage of a proceeding, the ALJ may proceed in that party's absence or may, in accordance with the hearing authority delegated by the agency, issue a final or proposed default order against the defaulting party." COMAR 28.02.01.23A.

On February 8, 2024, the ALJ issued a Proposed Default Order. In the Proposed Default Order, the ALJ found that Dr. Lizardi failed to appear or participate in the remote Prehearing Conference. The ALJ proposed that the Panel find Dr. Lizardi in default, adopt as findings of fact the statements set forth in the allegations of fact section of the charges, and conclude as a matter of law that Dr. Lizardi violated the Medical Practice Act and sexual misconduct regulations. The ALJ recommended denying Dr. Lizardi's application for licensure.

The ALJ mailed, by regular first-class mail, copies of the Proposed Default Order to Dr. Lizardi, the administrative prosecutor, and the Board at each respective address of record. The Proposed Default Order notified the parties that they may file written exceptions to the proposed order but must do so within 15 days of the date of the Proposed Default Order. The Proposed Default Order stated that any exceptions and requests for a hearing must be sent to the Board with a copy provided to the opposing party. Neither party filed exceptions. On April 10, 2024, this case came before Disciplinary Panel A ("Panel A") of the Board for final disposition.

FINDINGS OF FACT

Because Panel A concludes that Dr. Lizardi has defaulted and has not filed exceptions to the ALJ's Proposed Default Order, the following findings of fact are adopted from the allegations of fact in the charging document and are deemed proven by the preponderance of the evidence:

Application for Licensure

1. On or about August 22, 2022, the Applicant submitted his Application to the Board. The Application required the Applicant to answer “YES” or “NO” to a series of questions that addressed his professional fitness and character. The Application further required the Applicant to provide an explanation for all affirmative responses to those questions.

2. The Application specifically requested that the Applicant address whether any licensing or disciplinary board filed any complaints or charges against him or investigated him for any reason. In response, the Applicant disclosed that the New York State Board of Physician Conduct (the “New York Board”) suspended his New York medical license on two occasions.

3. The Applicant stated that his first prosecution occurred in or around 1983 after he “made the mistake of becoming romantically involved with two patients” and engaged in “irregularities in recordkeeping” that resulted in his prosecution for the “fraudulent practice of medicine.” The Applicant stated that he was suspended from the practice of medicine for one year, after which he was placed on probation for five years, subject to a series of probationary conditions.

4. The Applicant stated that his second prosecution occurred in or around 1994 when the Office of the Inspector General “raised questions about [his] transfer of two patients from one hospital to another.” The Applicant stated that his actions culminated in

disciplinary action against him which included a two-year stayed suspension of his license and the imposition of a \$20,000 fine.

5. The Applicant denied responsibility for his misconduct, claiming that his settlement of the second action “should not be construed as an admission that my treatment of the two patients in question was inappropriate . . . [and that he] firmly believe[s] that the professional medical judgment [he] exercised in these two cases was proper.”

6. The Application also requested that the Applicant disclose whether any malpractice claims had ever been filed against him. In response, the Applicant stated that he was the subject of two malpractice actions. The Applicant stated that the first action, which involved an inappropriate management of a delivery occurring in 1996, resulted in a plaintiff’s verdict of \$3,152,572.90. The second action, which involved a failure to remove gauze packing after a delivery occurring in 2011, resulted in a negotiated settlement of \$15,000.

7. The Applicant further disclosed that he has pending applications for medical licensure in 25 other states.

Board Investigative Findings

8. The Board initiated an investigation of the Applicant’s licensing and disciplinary history after reviewing the disclosures he made in the Application.

9. The Board’s investigation revealed that on two occasions, the New York Board suspended the Applicant’s New York medical license for reasons including sexual

misconduct, gross negligence, making false medical reports/records in the practice of medicine, and for other professional improprieties.

10. The Board's investigation also determined that the Applicant was the subject of two medical malpractice claims that resulted in judgments against him and that he made one or more material misrepresentations in his Application. The Board's findings are set forth *infra*.

New York Board Consent Order, 1987

11. In or around 1987, the New York Board issued disciplinary charges against the Applicant consisting of 14 specifications of professional misconduct. The New York Board alleged, *inter alia*, that the Applicant:

- (a) while performing a pelvic examination on a patient in or around February 1983, sexually stimulated the patient without medical purpose, touched the patient's breasts and questioned her about her sexual activities;
- (b) while performing a gynecologic examination in or around July 1983, propositioned a patient, met with the patient at her house in August 1983 and had sexual relations with her, and examined the patient in September 1983 during which he spoke to her in an "obscene, threatening and disparaging manner";
- (c) in a medical record from in or around October 1984, falsified the findings of a physical examination for a female patient that he did not perform, and placed those findings in the patient's hospital record; and
- (d) in or around March 1985, falsely claimed that he was simultaneously working at two different hospitals at the same time.

12. The Applicant resolved the New York Board's charges by agreeing to a Consent Order dated December 14, 1987, in which the New York Board found as a matter of law that he: engaged in professional misconduct that evidenced a moral unfitness to practice, in violation of N.Y. Educ. Law § 6509(9) (McKinney 1985); N.Y. Admin. Code tit. 8, § 29.1(b)(5) (1981); failed to maintain an accurate medical record, in violation of N.Y. Educ. Law § 6509(9) (McKinney 1985); N.Y. Admin. Code tit. 8, § 29.2(a)(3) (1981); willfully harassed, abused, or intimidated a patient, either physically or verbally, in violation of N.Y. Educ. Law § 6509(9) (McKinney 1985); N.Y. Admin. Code tit. 8, § 29.1(a)(2) (1981); practiced medicine in a fraudulent manner, in violation of N.Y. Educ. Law § 6509(2) (McKinney 1985); and abandoned professional employment under circumstances that seriously impaired the delivery of professional care to patients, in violation of N.Y. Educ. Law § 6509(9) (McKinney 1985); N.Y. Admin. Code tit. 8, § 29.1(a)(1) (1981).

13. Under the terms of the 1987 Consent Order, the New York Board suspended the Applicant's New York medical license for six years, with all but one year of the suspension stayed; placed the Applicant on probation for five years, subject to terms and conditions that included the Applicant's mandatory use of chaperones during examinations of female patients, and his entry into psychiatric or psychological therapy.

New York Board Consent Order, 1995

14. In or around 1995, the New York Board issued disciplinary charges against the Applicant, alleging that in 1992, he practiced medicine in a grossly negligent manner by

failing to appropriately assess a pregnant patient, failing to perform an immediate exploratory laparotomy on the patient, and then transferring the patient to a distant hospital.

15. The Applicant resolved the New York Board's charges by agreeing to a Consent Order dated June 26, 1995, in which the New York Board found as a matter of law that the Applicant's actions constituted practicing medicine with gross negligence, in violation of N.Y. Educ. Law § 6530(4) (McKinney Supp. 1995). The 1995 Consent Order specifically states that the Applicant pleaded guilty to practicing with gross negligence.

16. Under the terms of the 1995 Consent Order, the New York Board issued a two-year stayed suspension against the Applicant's license and placed him on probation for three years, to run concurrently with his stayed suspension.

Malpractice history

17. The Board's investigation revealed that the Applicant was the subject of two malpractice actions, occurring in 1996 and 2011, respectively. The first action resulted in a plaintiff's verdict of \$3,152,572.90. The second action resulted in a negotiated settlement of \$15,000.

Material misrepresentations on the Application

18. The Board's investigation also revealed that the Applicant made one or more material misrepresentations with respect to the actions the New York Board took against him. The Applicant stated in his Application that he was disciplined for a "romantic" involvement with two patients. The 1987 New York Board Order, however, states that the Applicant engaged in sexual improprieties with two female patients during gynecologic

examinations and willfully harassed, abused or intimidated one of the patients, either physically or verbally.

19. The Applicant also stated in his Application that his settlement of the 1995 action against him should not be construed as an admission that his treatment of patients was inappropriate. The 1995 New York Board Order, however, states that the Applicant willingly pleaded guilty to “practicing the profession of medicine with gross negligence.”

CONCLUSIONS OF LAW

Panel A finds Dr. Lizardi in default based upon his failure to appear or participate at the Prehearing Conference on January 30, 2024, at OAH. *See* State Gov’t § 10-210(4). Panel A finds, under Health Occ. § 14-205(b)(3)(i), reasons that are grounds for the denial of Dr. Lizardi’s application for medical licensure in Maryland under Health Occ. § 14-404. Based upon the foregoing findings of fact, Panel A concludes that Dr. Lizardi: is guilty of immoral and unprofessional conduct in the practice of medicine, in violation of Health Occ. § 14-404(a)(3)(i) and (ii); willfully made or filed a false report or record in the practice of medicine, in violation of Health Occ. § 14-404(a)(11); was disciplined by a licensing, certifying, or disciplinary authority or convicted or disciplined by a court of any state or country for an act that would be grounds for disciplinary action, in violation of Health Occ. § 14-404(a)(21); and violated a regulation adopted by the Board, and a State or law pertaining to the practice of medicine, in violation of Health Occ. § 14-404(a)(43). With respect to Health Occ. § 14-404(a)(21), the acts that would be grounds for disciplinary action under Health Occ. § 14-404(a) include immoral and unprofessional conduct in the

practice of medicine, in violation of Health Occ. § 14-404(a)(3)(i), (ii); willfully making or filing a false report or record in the practice of medicine, in violation of Health Occ. § 14-404(a)(11); and violated a regulation adopted by the Board and State law pertaining to the practice of medicine under Health Occ. § 14-404(a)(43). The violations referenced in Health Occ. § 14-404(a)(43) include Health Occ. § 1-212, which is a violation for sexual misconduct, and Code of Maryland Regulations (COMAR) 10.32.17.02 and .03, which finds violations related to sexual, contact, sexual harassment, and sexual misconduct. Finally, the Board finds that Dr. Lizardi does not possess good moral character, which is a requirement of licensure. *See* Health Occ. § 14-307(b).

SANCTION

Based on the entirety of the findings of fact, Panel A concludes that the denial of Dr. Lizardi's application for a license to practice medicine in Maryland is warranted.

ORDER

It is, on the affirmative vote of a majority of the quorum of Panel A, hereby

ORDERED that the application of Jose Lizardi, M.D. for a license to practice medicine in Maryland is **DENIED**; and it is further

ORDERED that this Order of Default goes into effect upon the signature of the Board's Executive Director or her designee. The Board's Executive Director or her designee signs this Order of Default on behalf of Panel A; and it is further

ORDERED that this is a public document.

06/12/2024
Date

Signature On File

Christine A. Farrelly, Executive Director
Maryland State Board of Physicians

NOTICE OF RIGHT TO PETITION FOR JUDICIAL REVIEW

Pursuant to Md. Code Ann., Health Occ. § 14-408, Dr. Lizardi has the right to seek judicial review of this Order of Default. Any petition for judicial review shall be filed within thirty (30) days from the date of mailing of this Order of Default. The date of the cover letter accompanying this Order is the date the decision was mailed. Any petition for judicial review shall be made as provided for in the Administrative Procedure Act, Md. Code Ann., State Gov't § 10-222 and Title 7, Chapter 200 of the Maryland Rules of Procedure.

If Dr. Lizardi files a petition for judicial review, the Board is a party and should be served with the court's process at the following address:

**Maryland State Board of Physicians
Christine A. Farrelly, Executive Director
4201 Patterson Avenue
Baltimore, Maryland 21215**

Notice of any petition should also be sent to the Board's counsel at the following address:

**David Finkler
Assistant Attorney General
Maryland Department of Health
300 West Preston Street, Suite 302
Baltimore, Maryland 21201**