IN THE MATTER OF	*	BEFORE THE BOARD
MEHRDAD AALAI, M.D.	*	OF PHYSICIAN QUALITY
Respondent	*	ASSURANCE
License No: D26712	*	Case No: 94-0357

* * * * * * * * * * * * * * *

FINAL ORDER AND OPINION

PROCEDURAL BACKGROUND

When the Board of Physician Quality Assurance ("BPQA" or "Board") receives information that a physician licensed in Maryland has been involved in criminal activity, it initially determines whether the action may fall within the mandate of Maryland Health Occupations Code Ann. ("H.O.") § 14-404(b) which provides:

> (1) On the filing of certified docket entries with the Board by the Office of the Attorney General, the Board shall order the suspension of a license if the licensee is convicted of or pleads guilty or nolo contendere with respect to a crime involving moral turpitude, whether or not any appeal or other proceeding is pending to have the conviction or plea set aside.
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> (2) After completion of the appellate process if the conviction has not been reversed or the plea has not been set aside with respect to a crime involving moral turpitude, the Board shall order the revocation on the certification by the Office of the Attorney General.

If BPQA determines that the crime at issue may involve moral turpitude, it refers the matter to the Office of the Attorney General for institution of procedures under COMAR 10.32.02.04.

On October, 1993, Mehrdad Aalai, M.D. (the "Respondent") was charged by criminal information in the Circuit Court for Baltimore City with one count each of medicaid fraud, theft over $500.00, knowingly destroying, damaging, or altering medical records, and obstruction of justice. Subsequently, Respondent engaged in plea negotiations with the Medicaid Fraud Unit of the Office of the Attorney General which prosecuted the criminal case.

On May 31, 1994, Respondent pled guilty to one count of medicaid fraud

pursuant to a plea agreement with the Medicaid Fraud Unit of the Office of the Attorney General. Respondent was sentenced to three years incarceration, suspended, ordered to pay a fine of $10,000, restitution to the State of Maryland in the amount of $142,570, and court costs, and placed on unsupervised probation for three years.

On June 14, 1994, BPQA's Weekly Review Panel voted to refer the case to the Office of the Attorney General for charging under H.O. § 14-404(b). On July 20, 1994, the Office of the Attorney General filed with BPQA a Petition to Revoke Respondent's Medical License, the certified docket entries of the criminal proceedings, the criminal information, the Medicaid Fraud Unit's statement of facts supporting the plea agreement, and the plea agreement signed by Respondent on May 31, 1994, wherein he admitted to one count of medicaid fraud in violation of Md. Ann. Code art. 27, § 641. Based on the Petition and exhibits, BPQA made a prima facie determination that Respondent had violated H.O. § 14-404(b) and issued a Show Cause Order requiring Respondent to show cause on or before August 22, 1994 why his license should not be revoked. On July 29, 1994, Respondent filed his response to the Show Cause Order and a request for a hearing. Subsequently, Respondent sought and was granted a continuance and the hearing was scheduled for October 26, 1994.

On Wednesday, October 26, 1994, Respondent and the Administrative Prosecutor appeared before BPQA for an oral show cause hearing. After consideration of the arguments of both parties, BPQA convened for a final decision in this case.

OPINION

A. Respondent's Motion to Dismiss

In the show cause hearing, Respondent argued that BPQA prejudged the issues in this case, thus warranting dismissal of the charges. For both factual and legal reasons, BPQA denies Respondent's request for dismissal.

At the onset, Dr. Aalai argues that because the BPQA considered a precharging settlement proposal by him and rejected it prior to the initiation of charges, that it has prejudged the case and now may not hear it. In order to adjudicate this issue, some review of pre-charging settlement discussions is appropriate. In November, 1993, after he was charged in the criminal case, Respondent initiated formal communications with BPQA to discuss the impact of criminal sanctions upon his Maryland medical license. At that time, BPQA staff discussed with Respondent's counsel the mandatory nature of H.O. § 14-404(b) and the procedures used by BPQA to take action pursuant to the statute.

On December 6, 1993, Respondent initiated discussions with BPQA regarding a possible settlement of any potential charges. BPQA's counsel indicated that BPQA might consider a pre-charge settlement of the case, provided Respondent reached a settlement with the Medicaid Fraud Unit which would provide a factual basis for BPQA's disciplinary action. Subsequently, the Medicaid Fraud Unit refused to participate in preparing a joint statement of facts to settle the criminal case.

On March 9, 1994, Respondent submitted a settlement proposal for BPQA's consideration. The proposal contained a statement of facts prepared by Respondent containing admissions to overbilling and proposed that Respondent's medical license be suspended for one year and the suspension stayed after sixty

days or less. On March 23, 1994, BPQA voted to reject Respondent's settlement proposal. Instead, BPQA indicated to Respondent that would consider settling the case only if Respondent agreed to a surrender of his medical license for at least one year.

On April 29, 1994, Respondent submitted a second settlement proposal for BPQA's consideration wherein he agreed to perform uncompensated medical care for three months and extensive community service if permitted to retain his medical license. Alternatively, Respondent proposed that his license be suspended for three months then reinstated, provided he performed 100 hours of community service for nine months. On May 25, 1994, BPQA voted to reject the second proposal as it failed to provide for a one year surrender as outlined previously. During the consideration of Dr. Aalai's settlement proposals, the BPQA understood that these discussions were without prejudice to any party if the discussions failed; the correspondence between Dr. Aalai and the BPQA during those negotiations clearly reflects that situation. Subsequently negotiations failed to resolve the matter, Dr. Aalai was convicted, and he was charged by the BPQA.

Looking at the substance of Dr. Aalai's claim that the issues were prejudged, this position lacks merit. The issues considered previously by BPQA were different than those now before us. Preliminarily, BPQA's consideration involved determining the appropriate sanction for settlement of a precharged factual proffer brought to us by Dr. Aalai. At that stage, the discretion accorded the BPQA is broad. The BPQA may consider precharging settlement proposals using general criteria, which include assessment of the public interest and integrity of the medical profession; further, at that stage, the BPQA is not bound by the sanctions authorized under the Medical Practice Act, Health

Occupations Article §14-404, and may consider innovative proposals made by potential respondents to resolve matters which may formally come before the BPQA.

In contrast, H.O. § 14-404(b) mandates a specific sanction upon meeting the criterion of the statute, indicating that the legislature has already assessed dispositional factors. Thus, the sole issue for BPQA's determination at this juncture is whether the crime at issue involves moral turpitude, clearly a distinct inquiry, both legally and factually, from any prior determination in this case.

BPQA's preliminary exposure to this case arose entirely through Respondent's initiative. Presumably, he believed BPQA's consideration of settlement of the case would offer some benefit over proceeding through regular channels. Equitably and legally, he cannot now complain that such action rendered BPQA incompetent to make a fair and unbiased final decision.

Respondent's claims do not meet the legal standard for demonstrating constitutional bias requiring dismissal in this case. Administrative officials routinely perform both prosecutorial and quasi-adjudicative functions. The same individuals who review allegations of fact in deciding to bring charges also adjudicate facts to reach a final decision. Such exposure at distinct procedural stages of a case has long withstood constitutional scrutiny and does not, standing alone, disqualify an administrative official from participating in a final decision:

> [i]t is also very typical for the members of administrative agencies to receive the results of investigations, to approve the filing of charges or formal complaints instituting enforcement proceedings and then to participate in the ensuing hearings. This mode of procedure does not violate the Administrative Procedure Act and it does not violate due process of law.

Consumer Protection Div'n v. Consumer Publishing, 304 Md. 731, 762, 501 A.2d 48, 64 (1985) (citing Withrow v. Larkin, 421 U.S. 35, 52 (1975)).

Administrative officials are strongly presumed to carry out their statutory

duties honestly and with integrity. Id. Mere exposure to the facts of a case at various points of the administrative process does not, standing alone, overcome this presumption.

Turning to the area of settlement discussions, in Hortonville Joint School District No. 1 v. Hortonville Educ. Ass'n, 426 U.S. 482 (1976), the United States Supreme Court held that familiarity with facts of a case through participation in settlement negotiations does not disqualify an administrative decision maker from participating in a final decision. The Court recognized that

> [a] showing that the Board was 'involved' in the events preceding [its] decision, in light of the important interest in leaving the Board with the power given by the state legislature, is not enough to overcome the presumption of honesty and integrity in policymakers with decisionmaking power.

Id. at 496-97. As in Hortonville, BPQA's involvement in settlement discussions with Respondent does not disqualify it from rendering a final decision based on the evidence in the record and the argument presented in the show cause hearing, particularly because those negotiations were instigated through Respondent's petition and involved an issue not relevant to its final decision.

Similarly, in Morris v. City of Danville, 744 F.2d 1041 (4th Cir. 1984), the Fourth Circuit refused to find prejudgment bias where the city manager made a preliminary decision to fire the Danville police chief after reviewing extensive uncontested investigative materials. After a hearing, at which Morris was represented by counsel and permitted to introduce evidence, the city manager permanently discharged Morris as chief of police. The court recognized that the city manager's initial decision did not disqualify the city manager from properly reaching a final decision on the hearing record. Id. at 1045-46. As in Danville, BPQA's preliminary exposure to the facts of this case does not preclude it from reaching a final decision on an appropriate record.

Fundamentally, Respondent asserts that BPQA's bias in this case is embodied in its precharge decision on a settlement proposal that it would not accept a settlement at that stage if it did not provide for at least a one year surrender of his medical license. By indicating that it would accept a one year surrender of Respondent's license as a settlement, BPQA merely gave recognition to the general legislative intent expressed in H.O. § 14-404(b) to impose a strict sanction for certain types of criminal conduct, while at the same time allowing Respondent to avoid the more onerous sanction of revocation.

An analogy to criminal plea proceedings supports BPQA's offer in this case. A criminal defendant is typically charged with a specific offense and all lesser included offenses. In plea negotiations, if the defendant agrees to plead guilty to a lesser included offense, an appropriate sanction is determined based on the sanction for that particular offense. Similarly, when offering Respondent a settlement involving at least a one year surrender of his license, BPQA felt constrained to accept a sanction analogous to that mandated by the legislature in H.O. § 14-404(b). Any lesser sanction, without a compelling reason justified by the public interest, would clearly contravene the legislative intent.

BPQA is not disqualified from reaching a final decision in this case because it provided Respondent with a minimum condition for settlement, if, in fact, that can be deemed an opinion on an appropriate sanction. In Doering v. Fader, 316 Md. 351, 558 A.2d 733 (1989), Judge Fader presided over a capital murder trial and stated that he did not believe the death penalty was appropriate in that case. After review, the case was remanded for a new sentencing proceeding. Judge Fader recused himself from that proceeding because he had expressed an opinion on the sanction requested by the State. The defendant petitioned the Court of Appeals to direct Judge Fader to preside over the new sentencing proceeding.

The Court of Appeals held that Judge Fader's opinion regarding the inappropriateness of the death penalty did not require his recusal. The Court stated that

> [t]he appropriate question is whether the trial judge is confident that he could, if persuaded by additional evidence or argument, come to a conclusion different from that which he has reached upon consideration of the proceedings to date. If he can, and if there are not other disqualifying factors which do not appear in this record, he is competent to sit and should not recuse himself.

Id. at 358, 558 A.2d at 737.

The Fader court based its holding on its interpretation of Canon 3C of the Maryland Code of Judicial Conduct, Maryland Rule 1231.[1] COMAR 10.32.02.07 mirrors that standard. As indicated above, after a review of the standard for recusal and an independent examination, the BPQA members concluded that they were competent to make an appropriate determination on the record before them. Nothing raised by Respondent persuades BPQA that this conclusion was inappropriate, particularly because BPQA's prior consideration of Respondent's settlement proposal was initiated by him and involved a distinct inquiry from the relevant issue at this juncture of the proceedings, namely, whether Respondent's crime involved moral turpitude.

To grant Respondent's requested relief would result in absence of a forum in which to adjudicate this matter. The Court of Appeals rejected a similar scenario in Board of Medical Examiners v. Steward, 203 Md. 574, 102 A.2d 248

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[1] Canon 3C provides in pertinent part:

> (1) A judge should not participate in a proceeding in which the judge's impartiality might be reasonably be questioned, including but not limited to instances where:
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> > (a) the judge has a personal bias or prejudice concerning a party, or personal knowledge of disputed evidentiary facts concerning the proceeding...

(1954). In that case, the Board of Medical Examiners determined that Dr. Steward had violated the Medical Practice Act. The reviewing court, after determining that the Board was improperly convened for the final decision, determined that the Board was disqualified from rehearing the case, as the Board members had participated in the improper prior decision. The Court of Appeals reversed, stating that judges frequently rehear cases after an appellate court has reversed and remanded for a new trial. The Court pronounced that "disqualification will not be permitted to destroy the only tribunal with power in the premises." Id. at 582, 102 A.2d at 252.

Similarly, in Board of Trustees v. Waldron, 285 Md. 175, 401 A.2d 172 (1979), a retired judge challenged the constitutionality of a statute which prohibited him from practicing law. The Court of Appeals recognized that every judge in the State had a personal interest in the outcome of the case. Nevertheless, the Court determined that recusal was inappropriate because

> the disqualification of all judges would destroy the only tribunal in which relief by appeal may be sought ... 'The settled rule of law is that, although a judge had better not, if it can be avoided, take part in the decision of a case in which he ha has had any personal interest, yet he not only may but must do so if the case cannot be heard otherwise.'

Id. at 179-180, 401 A.2d at 174-75 (citations omitted).

Respondent's contentions of bias do not even rise to the level of those raised in Steward and Waldron. In contrast to Steward, BPQA has not previously adjudicated the case to reach a final decision. Indeed, BPQA's only exposure to the case outside routine procedures for cases charged under H.O. § 14-404(b) arose through Respondent's petition to BPQA to review two settlement proposals. As indicated above, the issue examined by BPQA on those occasions was both factually and legally distinct from the moral turpitude issue before BPQA at this time. In contrast to Waldron, there is no factual basis to suggest that any of the

BPQA members has a personal interest in the outcome of this case.

H.O. § 14-404(b) evidences a legislative determination that the public interest and the integrity of the medical profession justifies a strict sanction for physicians who engage in certain types of criminal activity. To dismiss this case based on Respondent's unsupported complaints of bias, in the absence of any objective basis in the record, would clearly contravene the legislative mandate.[2]

In the course of the show cause hearing, Respondent argued that the circuit court was the appropriate forum to make the final decision in this case. However, jurisdiction of that court over physician disciplinary matters must arise by statute. Both the Medical Practice Act and the Maryland Administrative Procedure Act implicate that court's jurisdiction only by means of judicial review of a final agency decision. Md. State Gov't Code Ann. § 10-215; H.O. § 14-408. BPQA, an executive branch administrative agency, is the sole body authorized by the General Assembly to determine violations of the Medical Practice Act. Divestment of this authority by a court, absent any statutory authority, would be a clear violation of the separation of powers mandated by the Maryland Declaration of Rights.[3]

Finally, at the show cause hearing and prior to any discussion of the case,

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[2] On Tuesday, October 18, 1994, shortly before the Show Cause Hearing, Respondent filed a Complaint for Injunction to Stay Proceedings Before the Maryland Board of Physician Quality Assurance in the Circuit Court for Baltimore City . BPQA filed its opposition to the complaint on October 21, 1994. On October 25, 1994, the parties appeared before Judge Marvin Steinberg for oral argument. On that date, Judge Steinberg denied Respondent's request for injunctive relief. The pleadings and exhibits from that action are part of the BPQA record in this case.

[3] Article 8 of the Maryland Declaration of Rights provides:

> [t]hat the Legislative, Executive and Judicial powers of Government ought to be forever separate and distinct from each other; and no person exercising the functions of one of said Departments shall assume or discharge the duties of the other.

BPQA members were instructed on the law governing recusal. The appropriate standard requires that a fact-finder recuse himself from participating in a final decision where the individual has reached a firm decision which could not be set aside after hearing additional evidence or argument. See Doering v. Fader, 316 Md. 351, 360, 558 A.2d 733, 737 (1989). BPQA members performed an independent examination of themselves with regard to their past exposure to the facts of this case as presented by Respondent in his settlement proposals. In each case, the BPQA member determined that he or she had not prejudged the issues in this case and that recusal was not required. Because a majority of the full authorized membership of BPQA was competent to make a final decision, see H.O. § 14-406(a), dismissal of the case was not required.

B. BPQA's Action Under H.O. § 14-404(b)

In the course of the show cause hearing, Respondent argued that the Administrative Prosecutor failed to demonstrate that the crime to which he pled guilty involved moral turpitude. Furthermore, Respondent contended that even if BPQA does find that the crime involved moral turpitude, mitigating factors require the imposition of a sanction less than one year revocation as provided in H.O. § 14-404(b)(2) and COMAR 10.31.01.12.C.[4]

BPQA rejects the notion that the medicaid fraud committed by Respondent does not involve moral turpitude. The Court of Appeals in Att'y Grievance Comm'n v. Walman, 280 Md. 453, 374 A.2d 354 (1977), pronounced as well-settled law that a crime containing fraud as an essential element involves moral turpitude. Furthermore, the Court iterated that moral turpitude involves intentional dishonesty for purposes of personal gain. Id. at 459, 374 A.2d at 354.

[4] COMAR 10.31.01.12.C provides that when an order does not state a time period of revocation, a petition for reinstatement may not be considered by BPQA prior to one year following the date of the order.

The statement of facts supporting Respondent's plea agreement demonstrates a continuing course of conduct whereby Respondent altered medical records and was reimbursed for medical procedures not performed.

Respondent cannot contend that he did not financially benefit. Furthermore, Respondent pled guilty to count one of the criminal information which provides that the conduct occurred knowingly and wilfully. Finally, medicaid fraud is defined as receiving payments from the medicaid system by false or fraudulent means. Clearly, fraud is an essential element of this crime. Md. Ann. Code art. 27, § 230C.[5]

Respondent's attempts to challenge the underlying criminal guilty plea must fail for several reasons. First, the mandatory nature of the statute allows BPQA no discretion to consider the mitigating factors raised by Respondent. Such issues are properly considered by BPQA upon a petition for reinstatement of his license. While BPQA recognizes that the judge presiding over the criminal proceedings recommended that Respondent be permitted to retain his medical license for certain purposes, BPQA has been mandated by the legislature to revoke the medical license of a physician who has committed a crime involving moral turpitude. Thus, the judge's recommendation would be more appropriately raised in a petition for reinstatement.

In addition, because discipline under H.O. § 14-404(b) is a derivative action based on underlying criminal proceedings, Respondent may not re-litigate the integrity of the criminal plea in this forum. The plain language of the medicaid fraud statute implicates intentional conduct. Furthermore, the statement of facts supporting the guilty plea mandates BPQA to infer the

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[5] Md. Ann. Code art. 27, § 230C defines medicaid fraud in seven alternative ways. However, each alternative definition involves an element of fraud or false statement or representation.

requisite intent. Because Respondent voluntarily pled guilty to this charge, his contention that the fraudulent billing occurred unintentionally is without merit.

Respondent argued that the Administrative Prosecutor failed to meet the burden of demonstrating moral turpitude because her case was based on the statement of facts in the criminal proceeding, which were "the state's best shot," and not an agreed statement of facts. By this, Respondent seems to argue that the statement of facts signed by Respondent does not constitute an admission of conduct and may not be relied upon by BPQA in determining whether the underlying conduct supports a finding of moral turpitude. This contention must fail for several reasons.

First, the plain language of the statute evidences the intent of the General Assembly to avoid a contested case hearing wherein Respondent could challenge the integrity of his criminal plea. This conclusion has been upheld by the Maryland Court of Appeals in disciplinary cases under former Maryland Rule BV16,[6] which is virtually identical to H.O. § 14-404(b). In Bar Ass'n of Baltimore City v. Siegel, 275 Md. 521, 340 A.2d 710 (1975), the Court denied the

[6] Former Maryland rule BV16 provides in pertinent part:

> a. If an attorney is convicted in any judicial tribunal of a crime involving moral turpitude, whether the conviction results from a plea of guilty or nolo contendere or from a verdict after a trial, and regardless of the pendency of an appeal or any other post-conviction proceeding, the Bar Counsel shall file charges with the Court of Appeals alleging the fact of conviction and requesting that the attorney be suspended from the practice of law. A certified copy of the judgment of conviction shall be attached to the charges and shall be prima facie evidence of the fact that the attorney was convicted of the crime charged.
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> b. The Court of Appeals shall issue an order to show cause why the attorney should not be suspended from the practice of law until further order of the Court of Appeals. Upon consideration of the charges and the answer to the order to show cause the Court of appeals may enter an order, effective immediately, suspending the attorney from the practice of law until its further order.

Respondent an opportunity to present mitigating evidence in an attempt to challenge his conviction in the disciplinary forum:

> [w]e cannot accept as 'compelling extenuating circumstances' those proffers by the respondent which in essence call upon us to assess the integrity of the criminal conviction itself--that prior adjudication is conclusive and thus cannot be attacked in a disciplinary proceeding by invoking this Court to reweigh or to re-evaluate the respondent's guilty or innocence. . . .

Id. at 527, 340 A.2d at 713. Similarly, the Court of Appeals rejected former Governor Mandel's attempt to challenge his conviction for mail fraud in his disbarment proceedings. Attorney Grievance Comm'n v. Mandel, 294 Md. 560, 451 A.2d 910 (1982). The Court stated that:

> [o]ther states provide, as we do, by rule, statute, or case law, that a conviction of an attorney is conclusive proof of guilty (citations omitted). The constitutionality of these procedures has not been seriously questioned. the requirements of due process having been satisfied at the criminal trial, and the attorney's guilt having been established beyond a reasonable doubt at that proceeding, a new or other inquiry into the guilty of the attorney for disciplinary purposes is not mandated by either the State or federal constitutions.

Id. at 571, 451 A.2d at 915.

Respondent's argument that the overbilling resulted from error, rather than an intent to defraud the insurer, is nothing less than an attempt to challenge the propriety of his guilty plea, in contravention of Siegel and Mandel. Respondent was afforded greater constitutional protection in the underlying criminal proceeding than those required in an administrative disciplinary forum. That guilty plea was constitutionally required to be knowing and voluntary. McCall v. State, 9 Md. App. 191, 198, 263 A.2d 19, 23 (1970). Respondent had ample opportunity to present these mitigating arguments in the criminal proceeding. He made an informed decision to plead guilty to medicaid fraud. He may not now argue that the elements of the crime were not supported by the statement of facts.

By pleading guilty, Respondent admitted to conduct which met the elements for medicaid fraud. The Court of Appeals, in Sutton v. State, 289 Md. 359, 424 A.2d 755 (1981), held that "an acceptable guilty plea is an admission of conduct that constitutes all the elements of a formal criminal charge," such that "a plea of guilty, once accepted, is the equivalent of a conviction." Id. at 364, 424 A.2d at 758. Furthermore, before accepting a guilty plea, the presiding judge is required to determine whether the conduct admitted by the defendant constitute the elements of the crime charged. Id. at 364-65, 424 A.2d at 758. The Court of Appeals, in McCall v. State, 9 Md. App. 191, 263 A.2d 19 (1970), stated that

> the determination of the factual basis for the plea is predicated upon conduct of the defendant which he admits. therefore, insofar as the acceptance of the guilty plea is concerned, it is not a question of the credibility of the defendant or the weight to be given to facts and circumstances with regard to that conduct nor is it a matter of what the State may be able to prove on a trial of the merits, but is confined to what the defendant admits he did.

Id. at 200, 263 A.2d at 24.

In this case, the Office of the Attorney General submitted a statement of facts in support of the guilty plea. Thus, by signing the guilty plea, Respondent admitted, if not to the statement of facts, then to conduct which would support the elements of medicaid fraud. Clearly, BPQA may rely on those facts in examining the underlying conduct in this case.

Contrary to Respondent's argument, BPQA's disposition in other cases is irrelevant to the resolution of this case. While BPQA recognizes that cases cited by Respondent may have been resolved differently, those cases are either legally or factually distinct from this case. BPQA examines each case on its own merits and makes an appropriate determination based on the record in each case. Clearly, in this case, the record adequately supports BPQA's determination that the crime to which Respondent pled guilty involves moral turpitude.

C. Respondent's Request for a Two Month Stay

In the event that the BPQA determined that Dr. Aalai's licensed must be revoked, he sought a two month delay in the effective date of the order so that he, as a sole practitioner, could wind down his practice. While HO § 14-404(b) does not expressly provide for a delayed period for the enforcement of such an order, we are cognizant of the concern that for certain types of medical care situations, the immediate cessation of medical services could pose substantial inconvenience to the patient population and to other medical personnel required to fill a service void on an emergency basis. On the other hand, however, Dr. Aalai must certainly have been on notice that his medical license was in jeopardy and could have prepared his patient base during the pendency of these proceedings for the possible loss of his license. In balancing these factors, the BPQA determines that a one month period of continued care for current patients of Dr. Aalai's practice will provide for better continuity of care for his patients, and believes that this short term partial stay for the specific purpose of continuity of care is in the public interest and not in contention of the statutory intent.

FINDINGS OF FACT

By clear and convincing evidence, BPQA finds that:

1. Respondent was licensed to practice medicine in the State of Maryland on July 29, 1981. At all times relevant to this action, Respondent possessed a Maryland medical license.

2. On October 13, 1994, Respondent was charged by criminal information in the Circuit Court for Baltimore City with the following: one count of medicaid fraud by knowingly and willfully submitting applications requesting payment for services which were not performed and which involved money, goods, and

services valued at $500.00 or more in the aggregate, in violation of Md. Ann. Code art. 27, § 230C; one count of theft of $300.00 or greater, in violation of Md. Ann. Code art. 27, § 342; one count concealment of medical records, in violation of Md. Health General Code Ann. § 4-303; and one count of obstructing justice, in violation of Md. Ann. Code art. 27, § 27.

3. On May 31, 1994, Respondent pled guilty to one count of medicaid fraud, in violation of Md. Ann. Code art. 27, § 230C, pursuant to a plea agreement with the Medicaid Fraud Unit of the Office of the Attorney General. Respondent was sentenced to three years incarceration, suspended, three years unsupervised probation, and ordered to pay a fine of $10,000.00, restitution to the State of Maryland in the amount of $142,570.00, and court costs.

4. Respondent did not enter an appeal of the criminal proceedings.

5. On July 20, 1994, the Office of the Attorney General filed with BPQA the certified docket entries of the criminal proceedings in State of Maryland v. Mehrdad Aalai, M.D., case number 293302008.

6. The Court of Appeals of Maryland, in Att'y Grievance Comm'n v. Walman, 280 Md. 453, 459-60 (1977), determined that a crime in which fraud is an essential element is a crime involving moral turpitude.

7. Medicaid fraud, to which Respondent pled guilty, as defined in Md. Ann. Code art. 27, § 230C, contains fraud as an essential element of the crime.

8. Based on the totality of the circumstances surrounding Respondent's guilty plea, BPQA has determined as a matter of law that the crime to which Respondent pled guilty, namely one count of medicaid fraud, is a crime involving moral turpitude.

CONCLUSIONS OF LAW

Based on the foregoing Findings of Fact, there is clear and convincing evidence for BPQA to determine as a matter of law by clear and convincing evidence that Respondent falls within the mandate of H.O. § 14-404 (b)(2) (1991 Repl. Vol.), which provides:

> (1) On the filing of certified docket entries with the Board by the Office of the Attorney General, the Board shall order the suspension of a license if the licensee is convicted of or pleads guilty or nolo contendere with respect to a crime involving moral turpitude, whether or not any appeal or other proceeding is pending to have the conviction or plea set aside.
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> (2) After completion of the appellate process if the conviction has not been reversed or the plea has not been set aside with respect to a crime involving moral turpitude, the Board shall order the revocation on the certification by the Office of the Attorney General.

ORDER

Based on the foregoing Findings of Fact and Conclusions of Law, and for the reasons set out in this Opinion, it is this 6 day of ~~November~~ DECEMBER, 1994, by a majority of the full authorized membership of the Board of Physician Quality Assurance considering this case

ORDERED, that the license of Respondent, MEHRDAD AALAI, M.D., IS hereby REVOKED; and it is further

ORDERED, that the REVOCATION IS STAYED FOR THIRTY DAYS, in order for Respondent to minimize inconvenience to his current patients and to provide for an orderly transition of patients with current medical needs to new providers; and it is further

ORDERED, that, within this thirty day period in which the revocation is stayed, Respondent shall not be permitted to treat any new patients; and it is further

ORDERED, that this is a Final Order of the Board of Physician Quality Assurance and as such is a PUBLIC DOCUMENT pursuant to Maryland State Gov't Code Ann. §§ 10-611 et seq.

NOTICE OF RIGHT TO APPEAL

Pursuant to the Maryland Health Occupations Code Ann. § 14-408, you have a right to take a direct judicial appeal. A petition for appeal shall be filed within thirty days from your receipt of this Final Order and shall be made as provided for judicial review of a final decision in the Maryland Administrative Procedure Act, Maryland State Gov't Code Ann. §§ 10-201 et seq., and Title 7, Chapter 200 of the Maryland Rules of Procedure.

12/6/94
Date

Israel H. Weiner, M.D.
Chair