

COMMONWEALTH OF PENNSYLVANIA
DEPARTMENT OF STATE
BEFORE THE STATE BOARD OF MEDICINE

COPY

Commonwealth of Pennsylvania,
Bureau of Professional and
Occupational Affairs

v.

Timothy Fouch Liveright, M.D.,
Respondent

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:
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File No. 0225-49-14

Docket No. 13-49-04467

Department of State
2015 FEB 10 AM 9:50
PROFESSIONAL

FINAL MEMORANDUM ORDER
ADOPTING HEARING EXAMINER'S ADJUDICATION AND ORDER

This matter is before the State Board of Medicine (Board) for review of the hearing examiner's adjudication and order issued November 7, 2014, a copy of which is appended as Attachment "A". On November 24, 2014, the Board issued notice of its intent to review the hearing examiner's report. On November 25, 2014, Respondent emailed correspondence dated November 27, 2014, to the Board in which he appealed to the Board to "reverse or reduce the charges rendered in the opinion of the Hearing Examiner regarding [his] medical licensure status."

In his correspondence, Respondent requests that the Board show "flexibility" in its decision as well as "forgiveness and mercy." In support of his request, Respondent cites his "exemplary contribution to medicine," his already having received a reprimand from the Delaware Board of Medical Licensure and Discipline, and his "work in addiction care (Suboxone) for most of the last year." As the findings of fact indicate, the hearing examiner was aware of the facts on which Respondent now bases his request for "forgiveness and mercy." (Adjudication and Order, dated November 7, 2014, at Findings of Fact 5-6, 12-16). Similarly, the hearing examiner's discussion indicates that she considered the facts that Respondent presents to support the reversal or reduction of the imposed sanction. (*Id.* at pages 12-13 ("In

this case, Respondent provided mitigating evidence, in the form of his testimony that he has had no other disciplinary actions against him, has never had a malpractice case filed against him in his 25 years of practicing medicine, and has had no negative incidents in his practice with Advanced Urgent Care since he entered into the Delaware Consent Agreement. There is also some mitigation to be found in the fact that the Delaware Board imposed only a reprimand and a \$1500 civil penalty, rather than the more severe penalties of suspension or revocation”)).

The hearing examiner clearly weighed the factors that Respondent cited in his November 25, 2015 correspondence to the Board when determining the appropriate sanction to impose. The Respondent failed to present any additional argument, or potential evidence, that the hearing examiner has not already considered and weighed when determining the appropriate sanction. The Board finds that the hearing examiner appropriately weighed all the evidence and considered evidence presented in mitigation of any sanction that might be imposed. The Board agrees with the hearing examiner that the public reprimand of Respondent’s Pennsylvania license and the imposition of a \$1,500 civil penalty is the corrective sanction that will best protect the health and safety of the citizens of Pennsylvania for the reasons that the hearing examiner set forth.

NOW this 10th day of February 2015, having duly met and considered the entire record, including Respondent’s November 25, 2014 correspondence, in this matter at its February 3, 2015 meeting, the Board **HEREBY ADOPTS** the hearing examiner’s adjudication and order, including the statement of history, findings of fact, conclusions of law, and discussion as the Final Adjudication and Order in this case. A copy of the hearing examiner’s adjudication and order is attached as Attachment A. The discipline imposed shall be effective within thirty days of the date of mailing of this Final Memorandum Order.

This order shall take effect immediately.

**BUREAU OF PROFESSIONAL &
OCCUPATIONAL AFFAIRS**



**IAN J. HARLOW
ACTING COMMISSIONER**

Applicant's Address:

Prosecuting Attorney:

Board Counsel:

Date of Mailing:

STATE BOARD OF MEDICINE



**ANDREW J. BEHNKE, M.D.
CHAIR**

Timothy Fouch Liveright, M.D.
Seaview Harbor Marina
Longport, NJ 08403

Timothy Fouch Liveright, M.D.
648 Claverack Rd
Wysox, PA 18854

tliveright@frontiernet.net

WDG8762@sailmail.com

Lindsay Syzmanski, Esquire

Wesley J. Rish Esquire

February 10, 2015

ATTACHMENT A

ORIGINAL

RECEIVED
NOV 07 2014
Department of State
Prothonotary

COMMONWEALTH OF PENNSYLVANIA
DEPARTMENT OF STATE
BEFORE THE STATE BOARD OF MEDICINE

Commonwealth of Pennsylvania, :
Bureau of Professional and :
Occupational Affairs :

v. :

Timothy Fouch Liveright, M.D., :
Respondent :

Docket No. 0225-49-14
File No. 13-49-04467

ADJUDICATION AND ORDER

Ruth D. Dunnewold
Hearing Examiner

P.O. Box 2649
Harrisburg, PA 17105-2649
(717) 772-2686

DATE DISTRIBUTED 11/7/14
PROSECUTION _____
COUNSEL _____
HEARING EXAMINER _____
OTHER _____ -R

HISTORY

This matter comes before a hearing examiner for the Department of State on a single count order to show cause filed February 11, 2014, in which the Commonwealth alleged that Timothy Fouch Liveright, M.D. ("Respondent"), is subject to disciplinary action by the State Board of Medicine ("Board") under the Medical Practice Act ("Act"), Act of December 20, 1985, P.L. 457, No. 112, *as amended*, 63 P.S. § 422.1 *et seq.*, at section 41(4), 63 P.S. § 422.41(4), as a result of having had a license to practice the profession suspended by a proper licensing authority of another state, Delaware.

By letter dated February 14, 2014, Respondent answered the order to show cause. A Notice of Hearing initially scheduled the hearing for May 19, 2014, but it was continued at Respondent's request, with the consent of the Commonwealth, by Order Granting Respondent's Request for Continuance dated April 2, 2014. A Notice of Rescheduled Hearing established a new hearing date of August 18, 2014. Respondent subsequently requested a second continuance by letter dated June 30, 2014, to which the Commonwealth again consented, and an Order Granting Respondent's Motion for Continuance was filed July 7, 2014.

Thereafter, a Notice of Rescheduled Hearing set a hearing date of September 24, 2014. The hearing occurred as rescheduled. Respondent appeared and represented himself. The Commonwealth was represented by Prosecuting Attorney Lindsay B. Dearing, Esquire. The parties declined to file post-hearing briefs, and the record was closed with the filing of the hearing transcript on October 7, 2014.

FINDINGS OF FACT

1. Respondent holds a license to practice medicine in the Commonwealth of Pennsylvania, license no. MD064283L, which was originally issued on December 19, 1997. Official notice of Board records.¹
2. Respondent's license is inactive at his request, but it has an expiration date of December 31, 2014, and may be renewed, reactivated or reinstated at any time upon the filing of the appropriate documentation and payment of the necessary fees. Board records.
3. At all times pertinent to the factual allegations, Respondent held a license to practice medicine and surgery in the Commonwealth of Pennsylvania. *Id.*
4. Respondent's last known address on file with the Board is 648 Claverack Road, Wysox, PA 18854, but at the hearing, Respondent indicated that his address at the time was Seaview Harbor Marina, Longport, NJ 08403.² Board records; Notes of Testimony ("NT") at 19.
5. Respondent obtained his medical education at Temple University Medical School, graduating in 1972. NT at 19 – 20.
6. In the 25 years of his practice of medicine up until the spring of 2013, Respondent had worked for ten or so different Planned Parenthood organizations, as well as for non-Planned Parenthood groups. NT at 14.

¹Official notice is taken of the Board's licensure records pertaining to Respondent in accordance with the rule that a licensing board may take official notice of its own records. General Rules of Administrative Practice and Procedure, 1 Pa. Code § 31.1 *et seq.*, at § 35.173; *see also Falasco v. Commonwealth of Pennsylvania Board of Probation and Parole*, 521 A.2d 991 (Pa. Cmwlth. 1987) (The doctrine of official notice allows an agency to take official notice of facts which are obvious and notorious to an expert in the agency's field and those facts contained in reports and records in the agency's files); *Gleeson v. State Bd. of Medicine*, 900 A.2d 430, 440 (Pa. Cmwlth. 2006), *appeal denied*, 917 A.2d 316 (Pa. 2007) (licensing board may take official notice of its own records). All subsequent such references will be cited as "Board records."

²Respondent did not know the zip code for his Longport, NJ address. However, the website of the United State Postal Service, USPS.com, indicates the correct zip code to be 08403. Official notice is taken that this is the zip code assigned by the United States Postal Service. *See LOOK UP A ZIP CODE*,TM (last visited Nov. 6, 2014), <https://tools.usps.com/go/ZipLookupAction!input.action> (accessed by searching "Longport" in the "City" field and "NJ – New Jersey" in the "State" field).

7. At some point between June 2009 and June 2011, Respondent was hired at Planned Parenthood in Wilmington, Delaware. NT at 25.

8. On November 19, 2013, before the Delaware Board of Medical Licensure and Discipline ("Delaware Board"), Respondent entered into a Consent Agreement *In re: Timothy Fouch Liveright, M.D.*, Case No. 10-68-13 ("Delaware Consent Agreement"). Exhibit C-3; NT at 21.

9. In the Delaware Consent Agreement, Respondent admitted that the facts set forth in paragraphs 1 through 8 of the Delaware Consent Agreement were true and accurate. Exhibit C-3, paragraph 8.

10. Paragraphs 1 through 8 of the Delaware Consent Agreement provided as follows:

1. Respondent was a licensed physician in the State of Delaware. Respondent's license, number C1-0009099, was issued in 2009 and is considered "lapsed, must reapply."

2. On or about April 22, 2013, Respondent sent a letter to the Delaware Division of Professional Regulation wherein he stated that he had "now retired from the practice of medicine in Delaware and [had] no intentions of ever seeking practice there in the future" and enclosed his medical license and controlled substance registration. By this consent agreement, Respondent reaffirms that he will not seek to practice medicine in Delaware in the future.

3. At all relevant times, Respondent practiced medicine as an independent contractor at Planned Parenthood of Delaware ("PPDE"), 625 Shipley Street, Wilmington, Delaware.

4. On or about March 13, 2012, Respondent was reprimanded by PPDE for engaging in conduct that was "unprofessional, disrespectful, and inappropriate." Respondent agreed to participate in sexual harassment training to address these issues. Respondent completed such training on or about July 2012.

5. In engaging in the conduct described in paragraph 4, Respondent violated the following provisions of Title 24:

a. § 1731(b)(3) in that his conduct violated Board Regulations 8.1.3, 8.1.15 and 8.1.16; and

b. § 1731(b)(11) in that he engaged in misconduct in the practice of medicine.

6. Between February 12, 2013 and March 13, 2013, while performing medical or surgical abortions on three patients, Respondent failed to adequately document procedures and results of procedures in patient charts.

7. By his conduct described in paragraph 6, Respondent violated 24 *Del. C.* § 1731(b)(17) in that he violated Board Regulation 8.1.13.

8. Respondent admits that the facts set forth in paragraphs 1 through 8 herein are true and accurate.

Exhibit C-3, paragraphs 1 – 8.

11. In the Delaware Consent Agreement, Respondent agreed to administrative sanctions comprising a letter of reprimand and a \$1500 fine. Exhibit C-3, paragraph 9.

12. On January 7, 2014, the Delaware Board approved the Delaware Consent Agreement and entered it as an Order of the Delaware Board. Exhibit C-3.

13. Respondent has no other disciplinary actions against him and has never had a malpractice case filed against him in his 25-years of practicing medicine. NT at 14.

14. At the time of the hearing, Respondent was employed part time with Advanced Urgent Care, which has several clinic sites throughout Pennsylvania, and he had been assigned work at different sites throughout the Commonwealth, including in Scranton and in Philadelphia. NT at 20.

15. In his employment with Advanced Urgent Care, Respondent was clinically in charge of seeing urgent care patients, and much of his responsibilities included caring for people who were receiving Suboxone, a drug used to treat people who are attempting to get off street narcotics; he had last practiced two Sundays prior to the hearing date. NT at 20 – 21.

16. Respondent has had no negative incidents in his practice with Advanced Urgent Care. NT at 14.

17. Respondent is not licensed in any other state. NT at 21.

18. At the time of the hearing, Respondent indicated his intent to relocate in six weeks to take part in a climate change expedition around the world on a sailboat, and consequently, he could not provide a mailing address. NT at 19, 22.

19. Respondent received the order to show cause and all subsequent pleadings, orders and notices filed of record in this matter, appeared at the hearing, represented himself, testified, and presented a witness and documentary evidence on his own behalf. Board records; NT at 5 – 6 and *passim*.

CONCLUSIONS OF LAW

1. The Board has jurisdiction in this matter. Findings of Fact 1 – 3.
2. Respondent has been afforded reasonable notice of the charges against him and an opportunity to be heard in this proceeding, in accordance with the Administrative Agency Law, 2 Pa. C.S. § 504. Finding of Fact 19.
3. Respondent is subject to discipline under section 41(4) of the Act, 63 P.S. § 422.41(4), in that Respondent's license to practice medicine in Delaware has been disciplined by the proper licensing authority of that state. Findings of Fact 8 – 12.

DISCUSSION

Violation

The single count in this action is brought under section 41(4) of the Act, 63 P.S. § 422.41(4), which provides as follows:

63 P.S. § 422.41. Reasons for refusal, revocation, or suspension of license

The board shall have authority to impose disciplinary or corrective measures on a board-regulated practitioner for any or all of the following reasons:

* * *

(4) Having a license or other authorization to practice the profession revoked or suspended or having other disciplinary action taken . . . by a proper licensing authority of another state, territory or country, or a branch of the Federal Government.

* * *

The Commonwealth charged in its order to show cause that the Delaware Board disciplined Respondent in January 2014, when the Delaware Board adopted a Consent Agreement which reprimanded and imposed a \$1500 fine on Respondent's Delaware license to practice medicine, thus authorizing this Board to impose disciplinary sanctions on Respondent pursuant to this section of the Act.

At the hearing, the Commonwealth placed into the record documentary evidence which included a certified copy of the Delaware Consent Agreement. Additionally, Respondent admitted in his testimony at the hearing that he entered into the Delaware Consent Agreement. Both the reprimand and the fine imposed via the Delaware Consent Agreement constitute disciplinary action against Respondent's Delaware license by the Delaware Board. The Commonwealth has therefore proven the charge in the order to show cause by a preponderance

of the evidence,³ subjecting Respondent's license to practice medicine and surgery in the Commonwealth to disciplinary action, in the form of a variety of sanctions authorized in the Act at sections 41(4) and 42, 63 P.S. § 422.41(4) (*quoted above*) and § 422.42;⁴ the Medical Care Availability and Reduction of Error ("Mcare") Act, Act of March 20, 2001, P.L. 154, No. 13, *as amended*, 40 P.S. § 1303.101 *et seq.*, at section 908, 40 P.S. § 1303.908;⁵ and the Act of July 2,

³The degree of proof required to establish a case before an administrative tribunal in an action of this nature is a preponderance of the evidence. *Lansberry v. Pennsylvania Public Utility Commission*, 578 A.2d 600, 602 (Pa. Cmwlth. 1990). A preponderance of the evidence is generally understood to mean that the evidence demonstrates a fact is more likely to be true than not to be true, or if the burden were viewed as a balance scale, the evidence in support of the Commonwealth's case must weigh slightly more than the opposing evidence. *Se-Ling Hosiery, Inc. v. Margulies*, 70 A.2d 854, 856 (Pa. 1950). The Commonwealth therefore has the burden of proving the charges against Respondent with evidence that is substantial and legally credible, not by mere "suspicion" or by only a "scintilla" of evidence. *Lansberry*, 578 A.2d at 602.

⁴63 P.S. § 422.42. **Types of corrective action**

(a) **Authorized actions.**--When the board is empowered to take disciplinary or corrective action against a board-regulated practitioner under the provisions of this act or pursuant to other statutory authority, the board may:

- (1) Deny the application for a license, certificate or any other privilege granted by the board.
- (2) Administer a public reprimand with or without probation.
- (3) Revoke, suspend, limit or otherwise restrict a license or certificate.
- (4) Require the board-regulated practitioner to submit to the care, counseling or treatment of a physician or a psychologist designated by the board.
- (5) Require the board-regulated practitioner to take refresher educational courses.
- (6) Stay enforcement of any suspension, other than that imposed in accordance with section 40,¹ and place a board-regulated practitioner on probation with the right to vacate the probationary order for noncompliance.
- (7) Impose a monetary penalty in accordance with this act.

* * *

⁵40 P.S. § 1303.908. **Licensure board-imposed civil penalty**

In addition to any other civil remedy or criminal penalty provided for in this act, the act of December 20, 1985 (P.L. 457, No. 112), known as the Medical Practice Act of 1985, or the act of October 5, 1978 (P.L. 1109, No. 261), known as the Osteopathic Medical Practice Act, the State Board of Medicine and the State Board of Osteopathic Medicine, by a vote of the majority of the maximum number of the authorized membership of each board as provided by law or by a vote of the majority of the duly qualified and confirmed membership or a minimum of five members, whichever is greater, may levy a civil penalty of up to \$10,000 on any current licensee who violates any provision of this act, the Medical Practice Act of 1985 or the Osteopathic Medical Practice Act or on any person who practices medicine or osteopathic medicine without being properly licensed to do so under the Medical Practice Act of 1985 or the Osteopathic Medical Practice Act. The boards shall levy this penalty only after affording the accused party the opportunity for a hearing as provided in 2 Pa.C.S. (relating to administrative law and procedure).

1993, P.L. 345, No. 48, as amended ("Act 48"), 63 P.S. § 2201 *et seq.*, at section 5(b)(4) and (5), 63 P.S. § 2205(b)(4) and (5).⁶

While Respondent did not deny entering into the Delaware Consent Agreement, he made two arguments in his defense. First, he voiced a double jeopardy argument, stating that his "overall feeling [is] that the statute. . .represents double jeopardy." NT at 9. Second, he argued that he signed the Delaware Consent Agreement under duress or coercion, and he presented evidence, to which the Commonwealth did not object, in an attempt to demonstrate that he was prosecuted without any legitimate basis in Delaware. NT at 10, 11, 24 – 30. In neither instance, however, can Respondent prevail.

As to the double jeopardy argument, Pennsylvania's courts have long held that the protection against double jeopardy does not apply in civil proceedings, such as those before administrative agencies, because the revocation of a license is a purely remedial civil, rather than criminal, penalty which does not implicate the protections afforded by the Double Jeopardy Clause of the United States or Commonwealth Constitutions. *Nicoletti v. State Board of Vehicle*

⁶63 P.S. § 2205. Civil penalties

* * *

(b) Additional powers.--In addition to the disciplinary powers and duties of the boards and commissions within the Bureau of Professional and Occupational Affairs under their respective practice acts, boards and commissions shall have the power, respectively:

* * *

(4) To levy a civil penalty of not more than \$10,000 per violation on any licensee, registrant, certificate holder, permit holder or unlicensed person who violates any provision of the applicable licensing act or board regulation.

(5) To assess against the respondent determined to be in violation of the disciplinary provisions administered by a licensing board or commission in a disciplinary proceeding pending before the board or commission for final determination, as part of the sanction, the costs of investigation underlying that disciplinary action. The cost of investigation shall not include those costs incurred by the board or commission after the filing of formal actions or disciplinary charges against the respondent.

* * *

Manufacturers, Dealers and Salespersons, 706 A.2d 891, 894 – 895 (Pa. Cmwlth. 1998), quoting *Sweeny v. State Board of Funeral Directors*, 666 A.2d 1137, 1139 (Pa. Cmwlth. 1995); see also *Blair v. State Board of Nursing*, 72 A.3d 742, 749 – 750 (disciplinary action taken to protect the public serves a deterrent rather than a punitive purpose and thus does not violate the constitutional prohibition against double jeopardy). Therefore, Respondent's double jeopardy argument does not advance his case in any way.

The same is true of Respondent's argument that he entered into the Delaware Consent Agreement under duress or coercion, and that it has no legitimate basis. That argument is one which, essentially, collaterally attacks the procedural and substantive validity of the Delaware Consent Agreement. Such arguments are properly addressed to the courts of the State of Delaware because there is no provision in the law that permits the Board in this state to pass judgment on the action taken by a sister licensing Board. *Johnston v. State Board of Medical Education and Licensure*, 410 A.2d 103, 106 (Pa. Cmwlth. 1980); *Shoenhair v. State Board of Nurse Examiners*, 459 A.2d 877, 879 (Pa. Cmwlth. 1983). Moreover, in considering the allegation that Respondent has been disciplined in another jurisdiction, this licensing Board acts solely on the *fact* of disciplinary action in the other state, rather than on the underlying events that led to that action, so the substance of the charges in the other state, and the procedures used to resolve the matter there, are immaterial to the Board's consideration of this reciprocal disciplinary matter. *Johnston*, 410 A.2d at 106; *Shoenhair*, 459 A.2d at 879.

Based on these cases, Respondent's testimony about the circumstances underlying the Delaware Consent Agreement, and the Delaware Board's adoption of it, must be considered immaterial because it seeks to collaterally attack that discipline. Likewise, Dr. D'Amico's testimony on Respondent's behalf, which included her personal opinions of Respondent's

character, practice of medicine, and behavior, were aimed at eliciting the conclusion that Respondent did nothing wrong in Delaware. As such, her testimony supports Respondent's impermissible collateral attack on the Delaware Consent Agreement and also must be considered immaterial.

Additionally, Dr. D'Amico's testimony about Respondent's character and personality traits cannot be considered because it constitutes an opinion as to Respondent's character, rather than constituting appropriate testimony about his reputation. And despite the fact that the Commonwealth made no objections to Dr. D'Amico's testimony, testimony by a witness expressing her opinion of the character or character trait of a person is not admissible. Pa.R.E. 405(a). Dr. D'Amico's opinions cannot, therefore, support any findings in this matter.

Similarly, Respondent's Exhibit R-1 was admitted into evidence without any objection by the Commonwealth, but it cannot support any findings. That exhibit includes a page entitled "Timeline for Delaware State Action," which is essentially a written reiteration of Respondent's collateral attack on the Delaware Consent Agreement. Since it is a collateral attack, it cannot be considered.

Exhibit R-1 also contains a number of affidavits from individuals who did not appear at the hearing. While Exhibit R-1 was admitted into the record without objection from the Commonwealth, it is hearsay. "Hearsay" is defined as "a statement, other than one made by the declarant while testifying at the trial or hearing, offered in evidence to prove the truth of the matter asserted." Pa.R.E. 801(c). It is a well-established rule in the Commonwealth that hearsay to which no objection has been made cannot serve as the basis for a finding of fact unless it is corroborated by competent evidence in the record; a finding based solely on hearsay will not stand. *Walker v. Unemployment Compensation Board of Review*, 367 A.2d 366, 370 (Pa.

Cmwlth. 1976); *see also Shapiro v. State Board of Accountancy*, 856 A.2d 864, 872 (Pa. Cmwlth. 2004), *appeal denied*, 872 A.2d 174 (Pa. 2005). In this instance, the only evidence which corroborates the statements made in these affidavits is Respondent's and Dr. D'Amico's testimony collaterally attacking the Delaware Consent Agreement. Their testimony is not competent evidence since a collateral attack is not permitted. Accordingly, no information contained in Exhibit R-1 can be used to support any findings in this decision.

Finally, in the Delaware Consent Agreement, Respondent admitted the facts underlying the violations of Delaware law which he agreed he had committed. This is much the same as a guilty plea in a criminal context, where a defendant, by pleading guilty, acknowledges that he participated in the acts which constitute the elements of the offense to which he pleads guilty. *C.f. Burnworth v. State Board of Vehicle Manufacturers, Dealers and Salespersons*, 589 A.2d 294 (Pa. Cmwlth. 1991). In such a case, the Board is bound by the individual's guilty plea, and the individual cannot come before the Board and argue that he did not commit the offense which he previously acknowledged committing. *Id.*, 589 A.2d at 297. For these reasons, Respondent's defenses cannot prevail against the evidence.

Sanction

The Board has a duty to protect the health and safety of the public. Under professional licensing statutes including the Act, the Board is charged with the responsibility and authority to oversee the profession and to regulate and license professionals to protect the public health and safety. *Barran v. State Board of Medicine*, 670 A.2d 765, 767 (Pa. Cmwlth. 1996), *appeal denied* 679 A.2d 230 (Pa. 1996). In this case, Respondent provided mitigating evidence, in the form of his testimony that he has had no other disciplinary actions against him, has never had a malpractice case filed against him in his 25 years of practicing medicine, and has had no

negative incidents in his practice with Advanced Urgent Care since he entered into the Delaware Consent Agreement. There is also some mitigation to be found in the fact that the Delaware Board imposed only a reprimand and a \$1500 civil penalty, rather than the more severe penalties of suspension or revocation. Moreover, there is no evidence that Respondent endangered or harmed any patient in Delaware, and the record is devoid of evidence, as well, to indicate that any patients are in danger from Respondent's practice in the Commonwealth.

The Commonwealth made no recommendation as to an appropriate sanction. Under the circumstances, it is reasonable to mirror the sanction imposed in Delaware, thus affording to the Commonwealth's citizens the same protection Delaware afforded to its citizens.⁷ Accordingly, based upon the above findings of fact, conclusions of law and discussion, the following order will issue:

⁷Because of the uncertainty of Respondent's address and whereabouts based on his intended plan to sail around the world, he will be granted 90 days, rather than the usual 30 days, in which to pay the civil penalty.

**COMMONWEALTH OF PENNSYLVANIA
DEPARTMENT OF STATE
BEFORE THE STATE BOARD OF MEDICINE**

**Commonwealth of Pennsylvania,
Bureau of Professional and
Occupational Affairs**

v.

**Timothy Fouch Liveright, M.D.,
Respondent**

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**Docket No. 0225-49-14
File No. 13-49-04467**

ORDER

AND NOW, this 7th day of November, 2014, upon consideration of the foregoing findings of fact, conclusions of law and discussion, it is hereby **ORDERED** that the license to practice medicine and surgery issued to Respondent **Timothy Fouch Liveright, M.D., license no. MD064283L**, is **REPRIMANDED**.

IT IS FURTHER ORDERED that Respondent shall pay a **CIVIL PENALTY** of **\$1500**. Respondent shall pay said civil penalty within 90 days of the date of the Board's Final Order in this matter. Said civil penalty shall be paid by certified check, attorney's check or U.S. Postal Service money order, made payable to "Commonwealth of Pennsylvania," and shall be mailed to:

Board Counsel
State Board of Medicine
P.O. Box 2649
Harrisburg, PA 17105-2649

within 90 days of the date of the Board's Final Order.

Should Respondent fail to pay the civil penalty within 90 days of the date of the Board's Final Order, Respondent's license to practice medicine in the Commonwealth, MD064283L shall be **INDEFINITELY SUSPENDED** without the need for any further action by any prosecuting

attorney for the Commonwealth and will remain suspended until such time as Respondent pays the civil penalty in full.

This order shall take effect 20 days from the date of mailing unless otherwise ordered by the State Board of Medicine.

BY ORDER:



Ruth D. Dunnewold
Hearing Examiner

For Respondent:

Timothy Fouch Liveright, M.D.
Seaview Harbor Marina
Longport, NJ 08403

Respondent's email address:

tliveright@frontiernet.net

For the Commonwealth:

Lindsay B. Dearing, Prosecuting Attorney
GOVERNOR'S OFFICE OF GENERAL COUNSEL
DEPARTMENT OF STATE OFFICE OF CHIEF COUNSEL
PROSECUTION DIVISION
P.O. Box 2649
Harrisburg, PA 17105-2649

Date of Mailing: 11/7/14

NOTICE

(Medicine)

REHEARING AND/OR RECONSIDERATION

A party may file an application for rehearing or reconsideration **within 15 days of the mailing date** of this adjudication and order. The application must be captioned "*Application for Rehearing*", "*Application for Reconsideration*", or "*Application for Rehearing or Reconsideration*". It must state specifically and concisely, in numbered paragraphs, the grounds relied upon in seeking rehearing or reconsideration, including any alleged error in the adjudication. If the adjudication is sought to be vacated, reversed, or modified by reason of matters that have arisen since the hearing and decision, the matters relied upon by the petitioner must be set forth in the application.

APPEAL TO BOARD

An application to the State Board of Medicine for review of the hearing examiner's adjudication and order must be filed by a party **within 20 days of the date of mailing** of this adjudication and order. The application must be captioned "*Application for Review*". It must state specifically and concisely, in numbered paragraphs, the grounds relied upon in seeking the Board's review of the hearing examiner's decision, including any alleged error in the adjudication. Within an application for review a party may request that the Board hear additional argument and take additional evidence.

An application to the Board to review the hearing examiner's decision may be filed irrespective of whether an application for rehearing or reconsideration is filed. However, the filing of an application for rehearing and/or reconsideration does not extend, or in any other manner affect, the time period in which an application for review may be filed.

STAY OF HEARING EXAMINER'S ORDER

Neither the filing of an application for rehearing and/or reconsideration nor the filing of an application for review operates as a stay of the hearing examiner's order. To seek a stay of the hearing examiner's order, the party must file an application for stay directed to the Board.

FILING AND SERVICE

An original and three (3) copies of all applications shall be filed with:

Prothonotary
P.O. Box 2649
Harrisburg, PA 17105-2649

A copy of all applications must also be served on all parties.

Applications must be received for filing by the Prothonotary within the time limits specified. The date of receipt at the office of Prothonotary, and not the date of deposit in the mail, is determinative.

NOTICE

The attached Final Order represents the final agency decision in this matter. It may be appealed to the Commonwealth Court of Pennsylvania by the filing of a Petition for Review with that Court within 30 days after the entry of the order in accordance with the Pennsylvania Rules of Appellate Procedure. See Chapter 15 of the Pennsylvania Rules of Appellate Procedure entitled "Judicial Review of Governmental Determinations," Pa. R.A.P 1501 - 1561. Please note: An order is entered on the date it is mailed. If you take an appeal to the Commonwealth Court, you must serve the Board with a copy of your Petition for Review. The agency contact for receiving service of such an appeal is:

Board Counsel
P.O. Box 2649
Harrisburg, PA 17105-2649

The name of the individual Board Counsel is identified on the Final Order.