STATE MEDICAL BOARD OF OHIO
77 South High Street, 17th Floor • Columbus, Ohio 43266-0315 • (614)466-3934

November 12, 1997

Ayokunle Adebukola Oni, M.D.
7501 Surratts Road, Suite 208B
Clinton, MD 20735

Dear Doctor Oni:

Please find enclosed a certified copy of the Findings, Order and Journal Entry approved and confirmed by the State Medical Board meeting in regular session on November 12, 1997.

Section 119.12, Ohio Revised Code, may authorize an appeal from this Order. Such an appeal may be taken to the Franklin County Court of Common Pleas only.

Such an appeal setting forth the Order appealed from the grounds of the appeal must be commenced by the filing of a Notice of Appeal with the State Medical Board of Ohio and the Franklin County Court of Common Pleas within fifteen (15) days after the mailing of this notice and in accordance with the requirements of Section 119.12 of the Ohio Revised Code.

Very truly yours,

Thomas E. Gretter, M.D.
Secretary

TEG:jam
Enclosures

CERTIFIED MAIL RECEIPT NO. Z 395 591 402
RETURN RECEIPT REQUESTED

Mailed 11/13/97

CERTIFICATION

I hereby certify that the attached copy of the Findings, Order and Journal Entry, approved by the State Medical Board, meeting in regular session on November 12, 1997, constitute a true and complete copy of the Findings, Order and Journal Entry in the Matter of Ayokunle Adebukola Oni, M.D., as it appears in the Journal of the State Medical Board of Ohio.

This Certification is made by the authority of the State Medical Board of Ohio in its behalf.

(SEAL)

Thomas E. Gretter, M.D.
Secretary

11/12/97
Date

BEFORE THE STATE MEDICAL BOARD OF OHIO

IN THE MATTER OF *

*

AYOKUNLE ADEBUKOLA ONI, M.D. *

FINDINGS, ORDER AND JOURNAL ENTRY

This matter came on for consideration after a citation letter was mailed to Ayokunle Adebukola Oni, M.D., by the State Medical Board of Ohio on September 11, 1997.

By letter dated September 10, 1997, notice was given to Ayokunle Adebukola Oni, M.D., that the State Medical Board intended to consider disciplinary action regarding his license to practice medicine and surgery in Ohio, and that he was entitled to a hearing if such hearing was requested within thirty (30) days of the mailing of said notice. In accordance with Section 119.07, Ohio Revised Code, said notice was sent via certified mail, return receipt requested, to the last known address of Ayokunle Adebukola Oni, M.D., that being 7501 Surratts Road, Suite 208B, Clinton, MD, 20735.

No hearing request has been received from Ayokunle Adebukola Oni, M.D., and more than thirty (30) days have now elapsed since the mailing of the aforesaid notice.

WHEREFORE, for the reasons outlined in the September 10, 1997, letter of notice, which is attached hereto and incorporated herein, it is hereby ORDERED that the license of Ayokunle Adebukola Oni, M.D., to practice medicine and surgery in the State of Ohio be PERMANENTLY REVOKED.

This Order shall become effective IMMEDIATELY.

This Order is hereby entered upon the Journal of the State Medical Board of Ohio for the 12th day of NOVEMBER, 1997, and the original thereof shall be kept with said Journal.

Thomas E. Gretter, M.D.
Secretary

(SEAL)

11/12/97
Date

AFFIDAVIT

I, Debra Jones, being duly cautioned and sworn, do hereby depose and say:

1) That I am employed by the State Medical Board of Ohio (hereinafter, "The Board")

2) That I serve the Board in the position of Chief, Continuing Medical Education, Records, and Renewal;

3) That in such position I am the responsible custodian of all public licensee records maintained by the Board pertaining to individuals who have received certificates issued pursuant to Chapter 4731., Ohio Revised Code;

4) That I have this day carefully examined the records of the Board pertaining to Ayokunle Adebukola Oni, M.D.;

5) That based on such examination, I have found the last known address of record of to Ayokunle Adebukola Oni, M.D., to be:

   7501 Surratts Road
   Suite 208B
   Clinton, MD 20735

6) Further, Affiant Sayeth Naught.

Debra L. Jones, Chief
Continuing Medical Education,
Records and Renewal

Sworn to and signed before me, Lauren Lubow, Notary Public, this 29th day of October, 1997

Notary Public

LAUREN LUBOW, Attorney At Law
NOTARY PUBLIC, STATE OF OHIO
My commission has no expiration date.
Section 147.03 R.C.

P 152 984 486 Jam

US Postal Service
Receipt for Certified Mail
No Insurance Coverage Provided.
Do not use for International Mail *(See reverse)*

Sent to AYOKUNLE ADEBUKOLA ONI, MD	
Street & Number 7501 SURRATTS ROAD #208B	
Post Office, State, & ZIP Code CLINTON, MD 20735	
Postage	$ 1.93
Certified Fee	1.35
Special Delivery Fee	
Restricted Delivery Fee	
Return Receipt Showing to Whom & Date Delivered	1.10
Return Receipt Showing to Whom, Date, & Addressee's Address	
TOTAL Postage & Fees	$ 4.38
Postmark or Date	

PS Form **3800**, April 1995

SENDER:
- Complete items 1 and/or 2 for additional services.
- Complete items 3, 4a, and 4b.
- Print your name and address on the reverse of this form so that we can return this card to you.
- Attach this form to the front of the mailpiece, or on the back if space does not permit.
- Write "*Return Receipt Requested*" on the mailpiece below the article number.
- The Return Receipt will show to whom the article was delivered and the date delivered.

I also wish to receive the following services (for an extra fee):
1. ☐ Addressee's Address
2. ☐ Restricted Delivery

Consult postmaster for fee.

3. Article Addressed to:
AYOKUNLE ADEBUKOLA ONI, MD
7501 SURRATTS ROAD
SUITE 208 B
CLINTON, MD 20735

4a. Article Number
P 152 984 486

4b. Service Type
☐ Registered ☒ Certified
☐ Express Mail ☐ Insured
☐ Return Receipt for Merchandise ☐ COD

7. Date of Delivery
9-19-97

5. Received By: *(Print Name)*

6. Signature: *(Addressee or Agent)*
X

8. Addressee's Address *(Only if requested and fee is paid)*
CLINTON

Is your RETURN ADDRESS completed on the reverse side?

Thank you for using Return Receipt Service.

PS Form **3811**, December 1994 Domestic Return Receipt

STATE MEDICAL BOARD OF OHIO

77 South High Street, 17th Floor • Columbus, Ohio 43266-0315 • (614) 466-3934

September 10, 1997

Ayokunle Adebukola Oni, M.D.
7501 Surratts Road
Suite 208 B.
Clinton, MD 20735

Dear Dr. Oni:

In accordance with Chapter 119., Ohio Revised Code, you are hereby notified that the State Medical Board of Ohio intends to determine whether or not to limit, revoke, suspend, refuse to register or reinstate your certificate to practice medicine and surgery, or to reprimand or place you on probation for one or more of the following reasons:

1. On or about June 14, 1996, the Board of Physician Quality Assurance, State of Maryland, issued a reprimand to you based on your having altered your pocket certification of licensure and your Controlled Substances Registration Certificate in order to obtain hospital privileges. A copy of the Final Order and Opinion is attached hereto and fully incorporated herein.

The Final Order and Opinion, as alleged in paragraph (1) above, individually and/or collectively, constitutes "(t)he limitation, revocation, or suspension by another state of a license or certificate to practice issued by the proper licensing authority of that state, the refusal to license, register, or reinstate an applicant by that authority, the imposition of probation by that authority, or the issuance of an order of censure or other reprimand by that authority for any reason, other than nonpayment of fees," as that clause is used in Section 4731.22(B)(22), Ohio Revised Code.

Pursuant to Chapter 119., Ohio Revised Code, you are hereby advised that you are entitled to a hearing in this matter. If you wish to request such hearing, the request must be made in writing and must be received in the offices of the State Medical Board within thirty (30) days of the time of mailing of this notice.

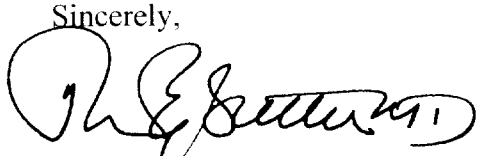
You are further advised that you are entitled to appear at such hearing in person, or by your attorney, or by such other representative as is permitted to practice before this agency, or you may present your position, arguments, or contentions in writing, and that at the hearing you may present evidence and examine witnesses appearing for or against you.

Mailed 9/11/97

In the event that there is no request for such hearing received within thirty (30) days of the time of mailing of this notice, the State Medical Board may, in your absence and upon consideration of this matter, determine whether or not to limit, revoke, suspend, refuse to register or reinstate your certificate to practice medicine and surgery or to reprimand or place you on probation.

Copies of the applicable sections are enclosed for your information.

Sincerely,



Thomas E. Gretter, M.D.
Secretary

TEG/caf
Enclosures

CERTIFIED MAIL #P 152 984 486
RETURN RECEIPT REQUESTED

rev.2/15/95

IN THE MATTER OF	*	BEFORE THE MARYLAND STATE
AYOKUNLE A. ONI, M.D.	*	BOARD OF PHYSICIAN
Respondent	*	QUALITY ASSURANCE
License No: D40295	*	Case No: 94-0493

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

FINAL ORDER AND OPINION

PROCEDURAL BACKGROUND

This case arose from information received by the Board of Physician Quality Assurance ("BPQA" or the "Board") that Ayokunle A. Oni, M.D. (the "Respondent") fraudulently altered his pocket certification of licensure to obtain clinical privileges at the Washington Adventist Hospital. On January 26, 1994, BPQA voted to charge Respondent with violating Md. Code Ann., Health Occ. ("H.O.") § 14-404(a)(3) and (11), which provide:

> (a) Subject to the hearing provisions of § 14-405 of this subtitle, the Board, on the affirmative vote of a majority of its full authorized membership, may reprimand any licensee, place any licensee on probation, or suspend or revoke a license if the licensee:
>
> > (3) Is guilty of immoral or unprofessional conduct in the practice of medicine; and
> >
> > (11) Willfully makes or files a false report or record in the practice of medicine.

Respondent appeared before BPQA's Case Resolution Conference Committee on March 15 and June 21, 1995. No settlement of the case was reached on either date. The matter was subsequently referred to the Office of Administrative Hearings (the "OAH") for a hearing on the merits of the case.

On August 1, 1995, Respondent filed with the OAH a Motion for Summary Decision pursuant to COMAR 28.02.01.16. The parties

subsequently stipulated to all facts and agreed that the matter was appropriate for summary decision. The Hon. James T. Murray, Administrative Law Judge (the "ALJ") presided over the hearing on September 19, 1995. On December 15, 1995, the ALJ issued a Recommended Decision wherein he recommended that the charges against Respondent be dismissed.[1]

On January 5, 1996, the Administrative Prosecutor filed with BPQA exceptions to the Recommended Decision. A response to the State's exceptions was filed with the BPQA by Respondent on March 1, 1996. On March 27, 1996, the parties appeared before BPQA for an oral hearing on exceptions. On that date, BPQA convened for a final decision in this case.

FINDINGS OF FACT

The BPQA adopts both the Stipulations of Fact of the parties and the ALJ's Findings of Fact as set out in the Recommended Decision issued on December 15, 1995. That decision is incorporated by reference into this Final Order and Opinion as Appendix A.

OPINION

The ALJ concluded in this case that the charges issued against Respondent should be dismissed because the alteration of his pocket certification of licensure and his DEA registration

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[1] On December 20, 1995, the Board voted to ratify an order granting to Respondent inactive licensure status due to a serious medical condition.

certificate was not conduct within the practice of medicine. For the following reasons, BPQA rejects this conclusion.

H.O. § 14-101(k) defines the "practice of medicine" as:

> [t]o engage, with or without compensation, in medical diagnosis, healing, treatment, or surgery ... [and] includes doing, undertaking, professing to do, and attempting ... diagnosing, healing, treating, preventing, prescribing for, or removing any physical, mental, emotional ailment or supposed ailment of an individual by physical, mental, emotional, or other process that is exercised or invoked by the practitioner, the patient, or both....

The Maryland Court of Appeals has defined the scope of the scope of the practice of medicine in McDonnell v. Comm'n on Medical Discipline, 301 Md. 426, 483 A.2d 76 (1984). In that case, Dr. McDonnell was disciplined by the Commission on Medical Discipline, BPQA's predecessor agency, for attempting to intimidate adverse witnesses in a medical malpractice case in which he was a defendant. The court reversed, holding that "the application of [H.O. § 14-404(a)(3)] is directly tied to the physician's conduct in the actual performance of the practice of medicine, i.e., in the diagnosis, care, or treatment of patients." Id. at 437, 483 A.2d at 81.

The McDonnell court interpreted the scope of the practice of medicine in only a very limited context. The court found that Dr. McDonnell's attempts to intimidate adverse witnesses in the civil litigation forum implicated only his general moral character and bore only a "general or associative" relationship to his practice as a physician.

In contrast, Dr. Oni's conduct is distinct from that in McDonnell, and is closely associated to his practice as a

physician. Dr. Oni falsified his pocket license certificate to gain hospital privileges at the Washington Adventist Hospital. Dr. Oni falsified his DEA registration certificate in order to prescribe controlled substances to patients in this State. Both clinical privileges and the ability to prescribe controlled substances are fundamental to Dr. Oni's medical practice.

Support for this conclusion that these acts fall within the practice of medicine come directly from the statutory language, which includes "undertaking, professing ... and attempting" to provide medical diagnosis and treatment. Hospital privileges and the ability to prescribe certain medications are inherently a part of a physician's ability to undertake, profess, and attempt to practice medicine. Indeed, it is difficult to conceive of a reason why Dr. Oni sought clinical or prescribing privileges other than to enable him to treat patients.

The BPQA rejects the narrow reading of the ALJ which would draw a bright line permitting a finding of unprofessional conduct or filing a false report only where there is direct patient care. Acquisition of clinical or prescribing privileges through deception would enable Dr. Oni to fraudulently profess to the public that he is authorized to perform these functions which are elemental to the practice of medicine. Because of the substantial risk of harm to the public resulting from issuance of clinical or prescribing privileges based on falsified information, such conduct bears more than a "general or associative" relationship to a physician's practice of medicine.

BPQA recognizes that Dr. Oni was attempting to merely speed up his ability to gain clinical privileges and be able to prescribe controlled substances. In fact, nothing indicates that Dr. Oni lied in order to gain these privileges to which he would otherwise have been entitled. However, a physician who is less than forthright about his own qualifications may also be less than honest in carrying out his duties as a physician, which may have a real and substantial impact on patient care.

The BPQA rejects the ALJ's use of a prior case, In the Matter of Russell M. Jaffe, M.D., Case No. 91-0117, to support his conclusion that Dr. Oni's conduct was not in the practice of medicine. There, Dr. Jaffe's conduct consisted of withholding pertinent information on his application for a District of Columbia medical license. Dr. Jaffe was charged under H.O. § 14-404(a)(21), with an underlying ground of H.O. § 14-404(a)(3), unprofessional conduct in the practice of medicine, for discipline imposed by the D.C. Board of Medicine. The final order of the D.C. Board expressly provided that Dr. Jaffe's conduct "did not relate to his professional competence and is not professional conduct which could adversely affect health or welfare of a patient or patients." In the Matter of Russell M. Jaffe, M.D., Case No. 91-0117, at page 6-7. Though BPQA dismissed the charges against Dr. Jaffe, that decision was based solely on the nature of the action taken by the D.C. Board of Medicine and not on a determination that such conduct was not within the practice of medicine.

In contrast to Dr. Jaffe, here Dr. Oni's conduct occurred in his attempt to gain hospital and prescribing privileges in the State of Maryland. As such, BPQA is not constrained to act within the limits imposed by another jurisdiction, but, instead, may interpret Dr. Oni's conduct in the first instance. BPQA finds that Dr. Oni's falsification of his pocket license certificate in order to obtain privileges and the falsification of his DEA certificate to enable him to prescribe controlled substances in Maryland fall squarely within his practice of medicine.

The ALJ also mischaracterizes BPQA's prior decision, In the Matter of Lester Banks, M.D., Case No. 92-0097. The ALJ noted that in Banks, Judge Ross determined that Dr. Banks's conduct toward other hospital employees was not in the practice of medicine. In fact, Judge Ross determined that Dr. Banks's harassment of Witness 2 while waiting in line to use an addressograph machine and while requesting a medical record was in the practice of medicine, while other incidents which occurred while Dr. Banks was just "passing time" were not. While the BPQA did adopt Judge Ross's findings of fact and conclusions of law, it did not adopt Judge Ross's reasoning as outlined in her discussion of the case.[2] The Final Order specifically provides that it was Dr. Banks's on-call status in the hospital, and not

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[2] Indeed, pursuant to Md. Code Ann., State Gov't § 10-205, the BPQA is not bound to the ALJ's discussion of the case, as only the authority to make proposed findings of fact and conclusions of law has been delegated by the BPQA to the OAH. See COMAR 10.32.02.

artificial distinctions such as whether or not he was requesting a medical record when the harassment occurred, that was dispositive of the issue of whether the unprofessional conduct occurred in the practice of medicine. In the Matter of Lester Banks, M.D., Case No. 92-0097, page 3-4. As in Banks, the BPQA finds that Dr. Oni's conduct in fraudulently seeking clinical and prescribing privileges bears more than a "general or associative" relationship" to the practice of medicine.

Finally, the ALJ's analysis of Dr. Oni's conduct under a moral turpitude standard is misplaced. There is no need to find that Dr. Oni's conduct involved moral turpitude either to discipline him for unprofessional conduct or filing a false report or to find that such conduct related to his practice of medicine. In fact, the McDonnell court expressly recognized that a physician's general moral character is immaterial to the question of whether or not the conduct occurred in the practice of medicine. Both the stipulated facts adopted by the ALJ and the ALJ's separate findings of fact establish that Dr. Oni falsified both his pocket license certificate and his DEA registration certificate in attempting to gain clinical privileges at the Washington Adventist Hospital. These facts amply support BPQA's determination that Dr. Oni's conduct was unprofessional and involved filing a false report. As outlined above, the BPQA also concludes that this conduct falls within the practice of medicine.

CONCLUSIONS OF LAW

Based on the foregoing findings of Fact, and after consideration of the hearing record, the Administrative Prosecutor's exceptions and Respondent's response to those exceptions, there is clear and convincing evidence to support the conclusion of a majority of the full authorized membership of the BPQA considering this case that Respondent committed the following acts:

> Is guilty of immoral or unprofessional conduct in the practice of medicine [H.O. § 14-404(a)(3)]; and
>
> Willfully makes or files a false report or record in the practice of medicine [H.O. § 14-404(a)(11)].

ORDER

Based on the foregoing Findings of Fact and Conclusions of Law, it is this 14th day of June, 1996, by a majority of the full authorized membership of the Board of Physician Quality Assurance considering this case

ORDERED that AYOKUNLE A. ONI, M.D., is hereby REPRIMANDED; 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 Md. Code Ann., State Gov't §§ 10-611 *et seq*.

NOTICE OF RIGHT TO APPEAL

Pursuant to the Md. Code Ann., Health Occ. § 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, Md. Code Ann., State Gov't §§ 10-201 et seq., and Title 7, Chapter 200 of the Maryland Rules of Procedure.

6/14/96
Date

J. Michael Compton
Executive Director

I HEREBY ATTEST AND CERTIFY UNDER PENALTY OF PERJURY ON 6/19/97 THAT THE FORGOING DOCUMENT IS A FULL, TRUE AND CORRECT COPY OF THE ORIGINAL ON FILE IN MY OFFICE AND IN MY LEGAL CUSTODY.

EXECUTIVE DIRECTOR
MARYLAND STATE BOARD OF
PHYSICIAN QUALITY ASSURANCE

APPENDIX A

IN THE MATTER OF	*	**BEFORE JAMES T. MURRAY**
AYOKUNLE A. ONI, M.D. **RESPONDENT**	*	**AN ADMINISTRATIVE LAW JUDGE**
	*	**OF THE MARYLAND OFFICE**
LICENSE NO. D 40295	*	**OF ADMINISTRATIVE HEARINGS**
	*	**CASE NO. 95-DHMH-BPQA-71-004** **BPQA NO. 94-0493**

* * * * * * * * * * *

PROPOSED DECISION

STATEMENT OF THE CASE
ISSUE
SUMMARY OF THE EVIDENCE
PRELIMINARY MATTERS
STIPULATIONS OF FACT
FINDINGS OF FACT
DISCUSSION
CONCLUSIONS OF LAW
PROPOSED ORDER

STATEMENT OF THE CASE

This case comes before this Administrative Law Judge as a result of Charges by the Maryland Board of Physician Quality Assurance (Board or BPQA) against the Respondent, AYOKUNLE A. ONI, M.D., issued on December 21, 1994 pursuant to the Medical Practice Act of the Md. Health Occ. Code Ann., §§ 14-101 through 14-702 (1994, 1995 supp.). The Respondent is charged under § 14-404(a)(3) which authorizes the Board to impose sanctions upon a licensee who "[i]s guilty of immoral or unprofessional conduct in the practice of medicine" and to impose sanctions upon a licensee who "[w]illfully makes or files a false report or record in the practice of medicine."

On August 1, 1995, counsel for the Respondent filed a Motion for Summary Decision. The parties subsequently stipulated to all relevant facts and agreed that the matter was appropriate for

resolution by summary decision. On September 19, 1995 a hearing was conducted at the Office of Administrative Hearings, 10753 Falls Road, Lutherville, Maryland 21093. T. Michael Preston, Esquire, of Anderson, Coe & King represented the Respondent and Steven P. Lemmey, Esquire, Assistant Attorney General, was the Administrative Prosecutor.

ISSUES

1. Has the Respondent violated the Health Occupations Article, Annotated Code of Maryland, Sections 14-404 (a)(3) and (a)(11)?

2. If the Respondent has violated a provision of the Health Occupations Article, Annotated Code of Maryland, Section 14-404, what is the appropriate sanction?

SUMMARY OF THE EVIDENCE

The parties agreed to the following stipulated exhibits, which were admitted into the record:

Stipulated Exhibit 1- Letter from Maxine Bosworth, Licensure Analyst, BPQA to the Respondent, dated December 10, 1993;

Stipulated Exhibit 2- Photocopy of a BPQA license certifying the Respondent as an authorized physician and surgeon in Maryland, with an expiration date of September 30, 1995;

Stipulated Exhibit 3- Letter from Rose M. Piard, Medical Staff Coordinator, Washington Adventist Hospital to the BPQA Legal Department, dated December 16, 1993;

Stipulated Exhibit 4- Letter from Maxine Bosworth to the Respondent, dated December 10, 1993;

Stipulated Exhibit 5- Photocopy of a Controlled Substances Registration Certificate, with hand written comments, naming the Respondent, with an expiration date of December 31, 1994;

Stipulated Exhibit 6- Photocopy of a Controlled Substances Registration Certificate naming the Respondent, with an expiration date of December 31, 1994;

Stipulated Exhibit 7- Summary of Incidence RE: Ayokunle Adebukola Oni, M.D., dated January 24, 1994;

Stipulated Exhibit 8- Letter to Mr. McCullough from the Respondent, undated;

Stipulated Exhibit 9- Letter to Ms. Rubin from the Respondent, dated December 27, 1993;

Stipulated Exhibit 10-Letter from Michael Compton, Executive Director, BPQA to the Respondent, dated March 18, 1994;

Stipulated Exhibit 11-Letter from Michael Compton, Executive Director, BPQA to the Respondent, dated March 23, 1994;

Stipulated Exhibit 12-Letter from Michael Compton, Executive Director, BPQA to the Respondent, dated March 30, 1994; and

Stipulated Exhibit 13-Charges Under the Maryland Medical Practice Act, dated December 21, 1994.

Neither party presented testimony or additional evidence. The hearing was limited to legal argument.

PRELIMINARY MATTERS

The summary decision provision of COMAR 28.02.01.16 is analogous to similar provisions found in the Federal Rules of Civil procedure and to Maryland Rule 2-501. COMAR 28.02.01.16C provides authority for an Administrative Law Judge to issue a "Summary Decision" on any substantive issue if "there is no genuine dispute as to any material fact and [if] the moving party is entitled to prevail as a matter of law." As the parties agree

as to all relevant facts, this case would appear to be appropriate for resolution by Summary Decision. Despite its caption, Mr. Lemmey's Motion is, in substance, also a Motion for Summary Decision. Accordingly, I will treat the Opposition to the Respondent's Motion for Summary Decision submitted by the Administrative Prosecutor as a Motion for Summary Decision on behalf of the Board.

STIPULATIONS OF FACT

The parties stipulated to certain facts, the pertinent parts of which are as follows:

1. Dr. Oni was licensed to practice medicine in the state of Maryland on June 27, 1990, with license no. D40295.

2. Dr. Oni's Maryland medical license expired on September 30, 1991, and was therefore considered inactive. During that time, Dr. Oni was pursuing post-graduate fellowship studies in Oregon and elsewhere.

3. Dr. Oni applied for reinstatement of his Maryland medical license on October 12, 1993.

4. Dr. Oni applied for medical staff privileges at Washington Adventist Hospital ("WAH") in Takoma park, Maryland, on or about October 5, 1993.

5. As a routine part of the credentialing process, WAH wrote to the Board in November 1993 to verify the status of Dr. Oni's medical license. In November 1993, the Board staff advised WAH that Dr. Oni had an inactive medical license.

6. On December 10, 1993, the Board wrote to Dr. Oni advising him that his application for reinstatement of his medical license had been processed and approved; that he had been reissued license number D40295, effective from December 2, 1993 to September 10, 1995; and stated that the license "is granted, pending ratification by the Board at its next scheduled meeting."

7. Dr. Oni would testify that he interpreted the Board's letter to mean that he was licensed to practice medicine at that time. He would also testify that, having received the Board's December 10, 1993 correspondence, and not appreciating that a new paper license and pocket license card physically would be issued by the Board, on or about December 13, 1993, Dr. Oni made a photocopy of his pocket license card and changed the expiration date from September 30, 1991 to September 30, 1995, the date stated in the Board's December 10, 1993 letter, mailed the document to WAH supplementing his application for privileges. A copy of the pocket license card was received by the WAH medical staff office December 16, 1993.

8. On December 16, 1993, members of the medical staff office at WAH received copies of a Maryland medical license from Dr. Oni listing an expiration date of September 30, 1995.

9. On or about December 16, 1993, the medical office at WAH received a copy of Dr. Oni's pocket license card showing an expiration date of September 30, 1995, and Rose Piard of that office telephoned the Board to verify that the inactive status of Dr. Oni's license had been lifted. Ms. Piard was informed that the license was still listed as inactive, with the expiration date of September 30, 1991.

10. On or about December 17, 1993, Ms. Piard spoke to Dr. Oni several times about the discrepancy between the expiration date appearing on his license and the information she received from the Board. At that time, Dr. Oni told Ms. Piard that he had submitted a copy of his old license on which he changed the expiration date to September 30, 1995 in accordance with the letter which he had received from the Board. He faxed Ms. Piard a copy of the Board's December 10, 1993 letter. On the same date, Ms. Piard telephoned the Board's Maxine Bosworth author of the Board's December 10, 1993 letter, who stated, according to Ms. Piard's notes, "that Dr. Oni's license will be ratified at the next Board's (sic) meeting of 1/19/94." Ms. Bosworth telephoned Ms. Piard the same day and stated that Dr. Oni has not been issued a new certificate with the expiration date of September 30, 1995, but only had received the letter of December 10, 1993. In his conversations with Ms. Piard, Dr. Oni admitted that he had changed the expiration date on his old Maryland license, and stated that he did not know a new card was going to be issued.

11. Among the materials requested by the WAH medical staff office in connection with Dr. Oni's application for privileges was his certification by the United States Drug Enforcement Administration ("DEA"). During the course of

the credentialing process, members of the medical staff office of WAH requested Dr. Oni to provide a copy of his DEA certification. Dr. Oni presented to the WAH medical staff office a copy of a DEA certificate showing his Greenbelt, Maryland address.

12. In the course of verifying Dr. Oni's qualifications and other information, members of the medical staff office at WAH contacted the DEA in December 1993. At that time, the DEA reported that Dr. Oni's DEA certification was listed under a Pennsylvania address, and that they had not received a change of address from Pennsylvania to Maryland. Also as part of the credentialing process, the WAH medical staff office contacted Physician Staffing of Cleveland, Ohio, which reported that the only DEA registration from Dr. Oni listed a Pennsylvania address. The WAH medical staff office later received a copy of Dr. Oni's DEA certification showing a Pennsylvania address.

13. After learning that the DEA certificate submitted by Dr. Oni showed an address which was different from that which was on file with the DEA, members of the WAH medical staff office contacted Dr. Oni, who admitted that he had submitted a copy of his DEA certificate which he had changed to show his current address, rather than his former address.

14. Ms. Piard of the WAH medical staff office prepared a summary of events concerning Dr. Oni, entitled "Summary of Incidence".

15. Some time after Dr. Oni acknowledged to the WAH medical staff office that he had presented a copy of his license with the expiration date changed, Dr. Oni wrote to Mr. McCullough of the Board's staff in an undated handwritten letter, in which he described the circumstances and apologized for the misunderstanding.

16. Dr. Oni wrote to Dawn Rubin of the Board's staff on December 17, 1993, in which he again described the circumstances and apologized for the misunderstanding.

17. On March 18, 1994, the Board's Executive Director, Michael Compton, wrote to Dr. Oni advising him that at the time when he received the Board's letter of December 10, 1993,... he [Dr. Oni] was authorized to practice medicine and that he continued to be so authorized.

18. On March 30, 1994, Mr. Compton also wrote to Barbara Nestler, head of the WAH medical staff office advising that Dr. Oni is authorized to practice medicine.

19. The Board filed charges against Dr. Oni in a Statement of Charges dated December 21, 1994.

FINDINGS OF FACT

In view of the above stipulated facts and the Memoranda and arguments of the parties, I find the following additional facts by clear and convincing evidence:[1]

1. Dr. Oni's medical license was approved by the Board effective December 2, 1993, subject to formal ratification by the Board at its next scheduled meeting. He continues to be licensed to practice medicine in Maryland.

2. A new paper medical license and a pocket medical license card were issued to Dr. Oni on or about December 13, 1993.

3. Dr. Oni was not aware that new paper medical license and pocket medical license cards would be issued by the Board.

4. On a date between December 10 and December 16, 1993, Dr. Oni altered the dates on his expired Maryland medical license and submitted it the WAH medical staff office as part of the credentialing process.

5. Dr. Oni did not change his address from Pennsylvania to Maryland with the DEA on his registration certificate prior to applying for reinstatement of his Maryland medical license or prior to applying for privileges at WAH.

6 During the course of the credentialing process at WAH, Dr. Oni altered the address on his DEA registration certificate and presented that document to the WAH medical staff office.

DISCUSSION

Both of the sections of the Medical Practice Act relied on by the Board in the instant case center around conduct purportedly occurring in the practice of medicine. The "practice of medicine" is defined under § 14-101 as follows:

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[1]These facts were not stipulated to by the parties, but were found based on the undisputed evidence.

(k) *Practice medicine*.-(1) "Practice medicine" means to engage, with or without compensation, in medical:

(i) Diagnosis;
(ii) Healing;
(iii) Treatment; or
(iv) Surgery.

(2) "Practice medicine" includes doing, undertaking, professing to do, and attempting any of the following:

(i) Diagnosing, healing, treating, preventing, prescribing for, or removing any physical, mental, or emotional ailment or supposed ailment of an individual:

1. By physical, mental, emotional, or other process that is exercised or invoked by the practitioner, the patient, or both; or

2. By appliance, test, drug, operation, or treatment;

(ii) Ending of human pregnancy; and
(iii) Performing acupuncture.

The Respondent moves for a Summary Decision in his favor on two separate bases: that the conduct in question does not involve "moral turpitude" and that it did not occur in the practice of medicine as defined in the statute. The Respondent argues that since Dr. Oni's conduct was not misleading, fraudulent or illegal, it cannot, therefore, be immoral or unprofessional. In support of his position that the conduct at issue does not involve the practice of medicine as that term is defined in Maryland, he relies primarily upon *McDonnell v. Commission on Medical Discipline*, 301 Md. 426, 483 A.2d 76 (1984).

The Board, conversely, maintains that the conduct in question did occur in the practice of medicine and maintains that

it is entitled to judgment as a matter of law. It believes that the matter under appeal is distinguishable from *McDonnell, supra* and points to cases decided by the Office of Administrative Hearings, the Board and the courts which were found to be factually dissimilar to *McDonnell*. The Board maintains that the actions for which the Respondent was charged do constitute unprofessional or immoral conduct because those acts involve elements of deceit and falsity.

Determining what constitutes an act of moral turpitude is often a difficult, fact specific question involving intangible issues such as intent. Untruthfulness itself can, under the right set of circumstances, implicate a physician's ability to give proper care and treatment to patients and many acts involving fraud or deception are generally regarded as deeds of moral turpitude. However, it does not necessarily follow, as both parties argue, that in order to involve moral turpitude an act must contain elements of fraud or deception. Moral turpitude has been defined as "an act of baseness, vileness, or depravity in the private and social duties to which a man owes to his fellow men, or to society in general, contrary to the accepted and customary rule of right and duty between man and man." *Board of Dental Examiners v. Lazzell*, 172 Md. 314, 320, 191 A. 240, 109 A.L.R. 1453 (1937).

The Court of Appeals, in upholding the disbarment of an attorney where the statute provided that any attorney found guilty of a crime of moral turpitude shall be disbarred, stated:

> The question of whether a particular crime involves moral turpitude within the meaning of the statute making such a crime a ground for disbarment is to be determined by a consideration of the nature of the offense as it bears upon the attorney's fitness to continue in the practice of law. (Citations omitted).

Braverman v. Bar Association of Baltimore City, 209 Md. 328, 121 A.2d 473 (1956). Although no crime is at issue in the instant case, the same reasoning is appropriate, especially since the conduct must be found to have occurred in the practice of medicine.

Viewing the Respondent's conduct in light of the generally held concepts of what constitutes moral turpitude and looking on how that conduct would reflect on his fitness to practice medicine, I cannot conclude that the conduct at issue herein involves moral turpitude. Although the submission of the altered license and DEA certificate both involved some element of deceit, neither act directly involved the Respondent's fitness to practice medicine, nor contained any actual false information. The facts of this case, to the extent that they show anything at all regarding the Respondent's motives, indicate that he did what he did only to expedite processing of his request for privileges at WAH, not to practice medicine in Maryland. In fact, the Respondent was not so charged pursuant to Md. Health Occ. Code Ann., § 14-10 (a)(1). On the other hand, that such conduct is unprofessional cannot legitimately be denied. It is apparent from the evidence that the Respondent knew what he did was improper. Moreover, common sense would also make it apparent to anyone, especially a reasoning, well educated person, that such

conduct is improper and unprofessional.

This Respondent, as did the Respondent in *In the Matter of Lester H. Banks, M.D.* (OAH Case No. 93-DHMH-BPQA-71-1237, Final Order issued December 13, 1994) cited by the Board, contends that disciplinary action in this case is outside the Board's jurisdiction because the conduct at issue did not occur within the practice of medicine, as defined by the Court of Appeals in *McDonnell, supra*. In a detailed argument, Counsel for the Respondent noted the factual differences between *McDonnell* and the other cases relied on by the Board and pointed out the similarities between *McDonnell* and the Respondent's case. In his view, the similarities between this matter and *McDonnell* clearly distinguish the Respondent's case from other cases Counsel for the Board has relied upon.

The Respondent notes that § 14-404 lists over thirty grounds for taking disciplinary action against a physician, but of those grounds, only three limit the proscription to "in the practice of medicine."[2] Therefore, the Respondent maintains, it is clear that the legislature wanted to make a distinction that only immoral or unprofessional conduct by a physician that occurs during the limited period when the physician is engaged in the treatment, care or diagnosis of a patient is within the reach of § 14-404.

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[2]The third disciplinary ground limited to "in the practice of medicine" not charged in this case is paragraph (18), "Practices medicine with an unauthorized person or aids an unauthorized person in the practice of medicine..."

Conversely, the Administrative Prosecutor argued that since the *McDonnell* decision in 1984, both the statute and the Board's role have changed. According to Mr. Lemmey, since the changes to statute following *McDonnell*, the Board has expanded its role and has construed the disciplinary statute to include misstatements on applications for medical licensure as part of the practice of medicine. In support of his position that the Board's role has been expanded since *McDonnell*, Mr. Lemmey refers to *Dr. X v. BPQA*, (No. 641, Court of Special Appeals, unreported, filed March 9, 1995), *cert. denied*, No. 147, Sept. 13, 1995, *Banks, supra* and several cases relating to attorney discipline.

In *McDonnell*, the Commission on Medical Discipline, the forerunner of the Board, charged Dr. McDonnell with "immoral conduct of a physician in his practice as a physician" after he attempted to intimidate adverse witnesses scheduled to testify against him at a medical malpractice trial. The Court of Appeals, agreeing that Dr. McDonnell's conduct was "improper and not to be condoned", held that it was not censurable under the applicable statute. The Court reasoned:

> It is readily evident that the legislature, in authorizing disciplinary sanctions against physicians for "unprofessional conduct" under § 130(h)[3], did so with great particularity. It expressly outlined and defined nineteen forms of physician misconduct, some of which have no immediate connection with the diagnosis, care or treatment of patients or the practice of medicine, such as habitual intoxication, conviction of a crime of moral turpitude, or the personal use of

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[3]*McDonnell* references Md. Ann. Code art. 43, § 130(h) which was recodified by Ch.6, Acts of 1990 to Md. Health Occ. Code Ann.

> illegal drugs. In only two of the nineteen described types of misconduct are the disciplinary infractions explicitly limited to a physician's act "in his practice as a physician," i.e.:
>
> "(8) Immoral conduct of a physician in his practice as a physician.
>
> (9) Willfully making and filing false reports or records, in his practice as a physician."

It is thus clear, as Dr. McDonnell points out, that it is not any immoral conduct of a physician, or any willful filing of a false report which constitutes "unprofessional conduct"; rather, the misconduct must occur in the physician's "practice as a physician." 301 Md. at 435-36.

In light of that reasoning, the Court concluded:

> It is thus clear that the legislature did not intend that a physician's general moral character would be subject to sanction under § 130(h)(8). In other words, it is not any immoral conduct of a physician committed during the time of his licensure which is within the terms of § 130(h)(8). Nor would that subsection embrace immoral conduct simply because, in some manner, it had a general or associative relationship to the physician in his capacity as a member of the medical profession. On the contrary, as we have indicated, the application of § 130(h)(8) is directly tied to the physician's conduct in the actual performance of the practice of medicine, i.e., in the diagnosis, care, or treatment of patients. *Id.* at 436.

In *Dr. X* the underlying issue was very similar to the issue currently under appeal. In that case, however, the Court made no decision regarding the reach of *McDonnell*, but commented only that current procedures are appropriate. It is true the Court in *Dr. X* stated, in essence, that the question of whether particular conduct is "related" to the practice of medicine must first be addressed by the Board, using its expertise and then later addressed by the Board again at the conclusion of the proceedings. The Court pointed out, as well, that in between, an

administrative law judge, after an evidentiary hearing, must reach his or her own decision. Moreover, the question in the instant proceeding is not whether the conduct is "related" to the practice of medicine, but rather whether it is "in" the practice of medicine.

Under Maryland law, as clearly pointed out in *McDonnell*, in order to be "in the practice of medicine" for disciplinary purposes, the physician's conduct must be in the actual "care, treatment or diagnosis of patients." 301 Md. at 436.

As pointed out by Mr. Lemmey, the Board's final decision in *Banks* appears to be instructive. I cannot find, however that it stands for the proposition for which it was cited. In its Final Order, the Board "adopt[ed] and incorporat[ed] by reference the Findings of Fact made by the [administrative law judge]" without modification and the entire decision was "attached to and incorporated into" the Final Order. In *Banks*, the administrative law judge found that some, but not all, of the conduct engaged in by the Respondent was in the practice of medicine. She therefore concluded that the Board had jurisdiction to sanction Dr. Banks and recommended that specific sanctions be imposed.

It is true that in *McDonnell* the Court of Special Appeals recognized that the Board had expanded its authority by including unprofessional conduct in the practice of medicine as an actionable offense, as argued by Mr. Lemmey, and in *Banks* Judge Ross also acknowledged those changes. She found, however, that despite the statutory changes since the *McDonnell* decision, those

changes were "not significant" to the issues in the case and that the holding in *McDonnell* "would apply to physician conduct outside the diagnosis, care or treatment of patients." *Banks* at p.13. Then, using the principles set forth in *McDonnell* as a frame of reference, Judge Ross determined that the Respondent's conduct toward fellow employees, who were at the hospital with the Respondent at the time of the incidents, was not in the practice of medicine. She stated:

> Despite the Respondent's presence in the hospital for the purpose of practicing medicine, and his attire while at the hospital, the evidence was neither clear nor convincing that he was undertaking the diagnosing, healing or treating of an individual during the events described by Witness #1 or Witness #3.

As noted above, the Board adopted the administrative law judge's entire decision. I find that decision highly persuasive.

Even more pertinent is the decision of *In the Matter of Russell M. Jaffe, M.D.* (OAH Case No. 94-DHMH-BPQA-71-0200, Final Order issued December 12, 1995). In that case, the Respondent was charged by the Board because it learned he was disciplined by the Washington D.C. Board of Medicine for failing to disclose information concerning charges pending against him in Virginia. Although the Respondent in *Jaffe* was sanctioned in the District for that conduct, the D.C. Board specifically stated that the conduct for which the Respondent was disciplined did not relate to his professional competence and was not professional conduct which could adversely affect the health or welfare of patients. The arguments of the parties were essentially the same as those

presented in *McDonnell, Banks* and the case *sub judice*. The administrative law judge, after an in-depth analysis which included discussion of the attorney discipline cases cited by the Board's counsel, concluded that:

> As in *McDonnell*, the Respondent's less than forthright conduct in applying for his D.C. license was improper and should not be condoned by the Board. Section 14-404(a)(3), however, is the improper avenue for the Board to address that conduct and impose disciplinary sanctions.

The administrative Law Judge's decision was adopted by the Board on December 12, 1995 and the Disciplinary charges were dismissed. I also adopt the administrative law judge's decision in *Jaffe* as it relates to what the phrase "in the practice of medicine means" and I too conclude that § 14-404(a)(3) is not a proper route by which to impose disciplinary sanctions on the Respondent in this case. Since the decision in *Jaffe* was that the filing of false or misleading papers relating to licensure does not constitute the practice of medicine, I conclude that the charge that the Respondent violated § 14-404(a)(11) is also not sustainable.

CONCLUSIONS OF LAW

On the basis of the facts found, the Stipulations of Fact and the legal arguments presented, it is the conclusion of this administrative law judge that the Respondent's alteration and falsification of his Maryland medical licenses and his DEA certificate does not constitute immoral or unprofessional conduct of a physician in the practice of medicine, nor does it

constitute willfully making or filing a false report or record in the practice of medicine. Consequently, the Maryland Board of Physician Quality Assurance cannot sanction the Respondent under Section 14-404(a)(3) or 14-404(a)(11) of the Health Occupations Article of the Maryland Annotated Code and the Respondent is entitled to judgment as a matter of law.

PROPOSED ORDER

On the basis of the foregoing, it is RECOMMENDED that the Board's Motion for Summary Decision be **DENIED;**

It is further RECOMMENDED that the Respondent's Motion for Summary Decision be **GRANTED;** and

It is further RECOMMENDED that the charges issued by the Board on December 21, 1994 against the Respondent, AYOKUNLE A. ONI, M.D., be **DISMISSED.**

Date: December 15, 1995

James T. Murray
James T. Murray
Administrative Law Judge

NOTICE OF RIGHT TO FILE EXCEPTIONS

Any party adversely affected by this Recommended Decision has the right to file exceptions with the Board of Physician Quality Assurance within 21 days of receipt of the Recommended Decision, in accordance with Md. State Gov't Code Ann., § 10-216 (1993, 1995 supp.) and Md. Health Occ. Code Ann. § 14-505 (1994).