

IN THE MATTER OF * BEFORE THE MARYLAND
NICOLA I. RILEY, M.D. * STATE BOARD OF
Respondent * PHYSICIANS
License No. D71213 * Case Nos.: 2011-0118, 2011-0130 & 2011-0160

* * * * *

FINAL DECISION AND ORDER

INVESTIGATIVE AND PROCEDURAL HISTORY

Nicola I. Riley, M.D., is a physician licensed by the Maryland State Board of Physicians (“Board”) since July 2010. In mid-August 2010, the Board began an investigation of Dr. Riley after receiving two complaints about her care of an 18-year-old female patient who sustained a uterine rupture and bowel perforation during Dr. Riley’s performance of a therapeutic abortion on August 13, 2010. Representatives of the Elkton Police Department alleged that Dr. Riley and another physician transported the critically injured patient in a private car to the emergency room of a local hospital after the failed abortion. Another complaint, filed by a physician from a Baltimore-area hospital to which the patient was airlifted for emergency surgery from Elkton, alleged that transporting a patient in this condition via personal vehicle to the emergency room was unsafe, demonstrated poor clinical judgment and placed the patient at risk.

On August 31, 2010, the Board summarily suspended Dr. Riley’s medical license under Md. Code Ann. State Gov’t § 10-226(c)(2), concluding that the public health, safety and welfare imperatively required emergency action. Following a show cause hearing on October 27, 2010, the Board continued the summary suspension.

Based on its investigation of these events, and further investigation of Dr. Riley’s application for licensure, the Board issued amended charges on October 5, 2011, charging Dr.

Riley with fraudulently or deceptively obtaining or attempting to obtain a license; unprofessional conduct in the practice of medicine; practicing medicine with an unauthorized person or aiding an unauthorized person in the practice of medicine; being disciplined by another state's licensing authority for an act that would be grounds for disciplinary action under § 14-404(a); and willfully making a false statement or representation when making application for licensure, in violation of the Maryland Medical Practice Act, Md. Code Ann., Health Occ. § 14-404(a)(1), (3)(ii), (18), (21) and (36) respectively.

Dr. Riley requested and received an evidentiary hearing on June 7, 8, 11 and 12, 2012, at the Office of Administrative Hearings ("OAH"). Evidence at that hearing included expert testimony from Suzanne Poppema, M.D., on behalf of Dr. Riley, and from Jennifer Coles, M.D., for the State. Dr. Riley did not testify at the hearing. In a Proposed Decision issued on September 12, 2012, Administrative Law Judge ("ALJ") William C. Herzing upheld the Board's charges and recommended that Dr. Riley's medical license be revoked.

Both parties filed exceptions to the ALJ's Proposed Decision, the State filed a Response to Dr. Riley's exceptions, and an oral exceptions hearing was held before the full Board. This Final Decision and Order is the Board's final administrative decision in this case. In making this decision, the Board has considered the entire record, including the investigative and prehearing record, the exhibits and testimony produced at the hearing, the arguments made before the ALJ, the Proposed Decision, and the parties' written and oral arguments during the exceptions process.

FINDINGS OF FACT

The Board makes the following findings of fact by a preponderance of the evidence:¹

¹ The Board will indicate in footnotes the similar findings made by the ALJ, whether made in the Proposed Decision's numbered findings of fact or in relevant paragraphs of pages in the ALJ's discussion.

(1) Court-Martial, Guilty Plea and Conviction 1990

The facts relating to Dr. Riley's criminal offenses and court-martial by the United States Army ("Army") are undisputed. Dr. Riley served as an officer in the Army after graduating from the United States Military Academy; was court-martialed, pled guilty to and was convicted of conduct unbecoming an officer in 1991, in violation of Article 133,² Uniform Code of Military Justice, 10 U.S.C. § 933; was incarcerated in Fort Leavenworth, Kansas for one year; and was dishonorably discharged from the Army in 1993.³

Dr. Riley's court-martial was based on charges or specifications of: (1) conspiring with two other enlisted individuals on July 1, 1990, to commit forgery, larceny of personal property and criminal impersonation; (2) knowingly assuming a false or fictitious identity on two separate occasions - July 14, 1990 and again on August 25, 1990 - and knowingly using these identities to provide false personal information with intent to gain a personal benefit and to defraud two jewelry stores, with the further intent to purchase items of value in these establishments; (3) with intent to defraud, falsely making the signature of an army employee to two credit purchase receipts on a credit account in the name of that employee on July 14, 1990, and stealing pearl earrings, a ladies watch, a 14-karat gold chain, a money clip and a tie clip from one jewelry store, for a total value of \$441; (4) with intent to defraud, falsely making the signature of another army employee to three credit purchase receipts on a credit account in the name of that employee on August 27, 1990, at another jewelry store, and stealing two ladies Seiko watches, a Seiko clock, a Seiko musical clock, a signet ring, a jewelry chest, a ladies ring, a set of black pearl earrings and a jewelry box, for a total value of \$3,085.⁴

² The Board makes no findings regarding Dr. Riley's reference to Article 132 rather than Article 133 on her licensure application.

³ See pages 8-10, 12 of the Proposed Decision ("PD"), numbered findings ("#") 1-9, 20.

⁴ PD, p.13, # 22-24.

Dr. Riley pled guilty to each of the elements in the specifications before the military court⁵ and described the underlying facts of her crimes in her own words. She admitted that she conspired to commit forgery, larceny and criminal impersonation by forging other person's names and identities to obtain instant credit at mall jewelry stores in Colorado Springs, Colorado. She admitted that she knowingly used the names and social security numbers of army personnel who were not involved in the scheme to fill out credit applications at Gordon's Jewelers and at Bailey, Banks and Biddle. Dr. Riley further admitted that she obtained instant credit by assuming the identities of others, that she obtained jewelry without paying for it or without any intent to pay for it herself, and that she defrauded the jewelry stores because she knew the stores had no way to trace her and would get stuck with the bill. The court advised Dr. Riley of her due process trial rights and other rights, and she waived these rights and voluntarily pleaded guilty to the specifications.

(2) Maryland Medical License Application, June 15, 2010

Dr. Riley's answers on her application for medical licensure in Maryland are similarly undisputed.⁶ She answered "Yes" to Question 17(g), which asked: Have you committed a criminal act to which you pled guilty or nolo contendere, or for which you were convicted or received probation before judgment? In her written explanation, Dr. Riley at that point told the Board that she had "been convicted of a federal violation - an Article 132 United States Code of Military Justice: Conduct unbecoming an officer for fraternization with an enlisted soldier." She also stated that the "offense occurred while on active duty in the US Army in 1991" and that "the records are sealed due to my top secret security clearance at the time." In addition, Dr. Riley told the Board that her conviction had not prevented her "from attending medical school, a residency,

⁵ PD, p. 13, # 25.

⁶ PD, pp. 10-12, # 12-17, 19.

obtaining a DEA license nor medical license. . .” She certified that the information she provided on her application was true and accurate to the best of her knowledge.⁷ When Board staff requested additional information about her conviction, Dr. Riley replied:

The conviction was a United Courts of Military Justice in July, 1991, while stationed at Fort Carson, Colorado;

This is consider (sic) a felony conviction and will show up on any routine background check.

The charges were as follows: Article 132, Conduct unbecoming an officer with conspiracy to commit fraternization, credit card fraud and subsequent criminal impersonation, due to fellow soldiers under my care using other peoples credit cards. I failed to report them in a timely manner and was held accountable for my lack of inaction.

I plead non (sic) contest and agreed to 30 months with a minimum of one year at Fort Leavenworth, Kansas, a minimal security prison barracks, with subsequent parole at my home in New York without further incident. I did receive a dishonorable discharge and have no further obligation to the US Army after 1993. Unfortunately, all my copies of the trial were destroyed in a storage fire in 1995.⁸

The Board granted a medical license to Dr. Riley effective July 20, 2010.⁹ The Army released Dr. Riley’s court-martial records to the Board in October, 2010.

(3) Dr. Riley Fraudulently and Deceptively Obtained a Medical License in Maryland, Utah And Wyoming

The Army records revealed that Dr. Riley’s answers on her 2010 application for licensure and in her subsequent response to the Board’s questions were both deceitful¹⁰ and fraudulent. Dr. Riley deliberately intended to deceive the Board by phrasing her answers and responses as she did. She failed to adequately communicate the nature and full extent of her crimes, failed to disclose that she was convicted because of her own criminal activities and attempted to create the false impression that she was a non-participant in the crimes committed.¹¹ Contrary to what she led the Board to believe, her conviction was not based on the misdeeds of others or on passivity

⁷ PD, p. 10, # 13.

⁸ PD, p. 12, # 19(f).

⁹ PD, p. 15, # 35.

¹⁰ PD pp. 11-13, # 16-19, 21, 26; PD, pp. 32, 34, 35, 36, 37.

¹¹ PD pp. 11, 13, # 17, 18, 26; PD, p. 36.

or inaction on her part.¹² Nor was she convicted of or even charged with fraternization with an enlisted soldier.¹³ Rather, after conspiring with others to commit forgery, larceny and criminal impersonation, Dr. Riley herself committed the acts of forging signatures with intent to defraud. She stole thousands of dollars worth of jewelry and other goods, she misused the names and social security numbers of other army personnel to facilitate credit card applications in the names of these individuals, and then she charged merchandise to these cards.¹⁴

Dr. Riley's answer, that she pled no contest, was blatantly and intentionally false.¹⁵ She not only pled guilty to each element of the specifications during her court-martial proceedings, but she engaged in a lengthy colloquy with the military judge during which the court established that she fully understood the meaning and effect of her guilty plea.¹⁶ Dr. Riley acknowledged to the court that she realized it meant she admitted to every act, omission and element of the offenses, and that she was pleading guilty because she wanted to admit her guilt and because she was, in fact, guilty.

By telling the Board that the records were sealed due to her top secret security clearance, and by further stating that her copies of the trial were destroyed by fire, Dr. Riley also conveyed the false impression that these records were unobtainable. The court-martial records, however, were available, and in fact, were easily obtainable. The Army released the records in response to the Board's request. The facts contained in these records showed that Dr. Riley had intentionally distorted her criminal history in her Board application. Also, the records were not sealed as she stated in her application.¹⁷

¹² PD, p. 13, # 26.

¹³ PD, p. 13, # 21; PD, p. 36.

¹⁴ PD, p. 36.

¹⁵ PD, pp. 36-37.

¹⁶ PD, pp. 36-37.

¹⁷ Whether Dr. Riley had top secret security clearance at the time of her court-martial is not relevant to this finding.

Although Dr. Riley's statement that her conviction did not prevent her from attending medical school and obtaining various licenses in the past was factually accurate, it was also misleading and deliberately deceitful.¹⁸ Her assertion created the false impression that her crimes were not serious enough to hinder either her admission to medical school or her professional advancement in the medical field. In essence, Dr. Riley insinuated that the relevant authorities knew the truth about and extent of her crimes.¹⁹ They did not. Her medical school application contained no questions about criminal convictions, and Dr. Riley did not disclose her past criminality. Dr. Riley's answers to questions on licensure applications to Utah in 2004 and to Wyoming in 2008 were similar to her fabricated answers on her Maryland licensure application, significantly minimizing her involvement and stating that her only crime was a failure to report the crimes of others. These statements were equally false and intentionally deceptive.²⁰

Dr. Riley's answers were designed to deceive the Board and to induce the Board to grant her a license. Her deliberate and calculated response was also intended to, and did, deceive the Board. It is self-evident that the Board relied on Dr. Riley's answers because the Board granted her a medical license in the mistaken belief that her answers were truthful. Dr. Riley's answers on her Maryland application, therefore, were fraudulent as well as deceptive.

By making similar misrepresentations on her applications in Utah and Wyoming,²¹ Dr. Riley utilized the same strategy of falsifying the salient facts underlying her court-martial and conviction, and thus fraudulently and deceptively obtained medical licenses in those states. On her Utah application in 2004, Dr. Riley stated that two enlisted soldiers under her jurisdiction were convicted of credit card fraud and criminal impersonation in 1991, that she pled no contest

¹⁸ PD, p. 37.

¹⁹ PD, p. 37.

²⁰ PD, p. 37.

²¹ PD, pp. 37, 42, 43, 44.

to knowing of the events, failing to report them in a timely manner and thus being listed as an accomplice to their acts. On her Wyoming application in 2008, Dr. Riley stated that her crimes merely involved fraternizing with an enlisted soldier and conspiracy to commit fraud by not reporting soldiers under her command who were committing credit card fraud. Dr. Riley successfully obtained licensure in these two states in 2004 and 2008 based on her intentional, deceitful misstatements, falsehoods and omissions on her applications.

(4) Dr. Riley was Disciplined in Utah and Wyoming for Acts that Constitute Grounds for Disciplinary Action in Maryland under Section 14-404 of the Medical Practice Act

In August 2011, Dr. Riley entered into a Stipulation and Order with the Utah licensing division, in which she admitted that: (1) she failed to provide accurate and correct information about her prior criminal conduct on her 2004 application for licensure: (2) the Army documents showed her direct involvement in the fraudulent criminal actions and differed from her representations on her licensure application; (3) she minimized her involvement in these incidents; and (4) her acts constituted unlawful conduct (including obtaining a license through the use of fraud, forgery, or intentional deception, misrepresentation, misstatement, or omission) and unprofessional conduct (including practicing or attempting to practice an occupation or profession requiring licensure . . . by any form of action or communication which is false, misleading, deceptive, or fraudulent) under the Utah Medical Practice Act. The terms and conditions of the Utah disciplinary Order included a public reprimand of Dr. Riley and the requirement that she pay a \$10,000 penalty.²²

In 2011, following an investigation by the Wyoming Board of Medicine of Dr. Riley's answers to questions on her 2008 application for licensure in that state, Wyoming Board representatives informed her of their belief that her conduct involved violations of the Wyoming

²² PD, p. 14, #31; PD, pp. 43, 44.

Practice Act and unprofessional conduct using a false, fraudulent or deceptive statement in a document connected with the practice of medicine. Dr. Riley admitted to the Wyoming Board that she gave the impression on her application that her involvement in the credit card fraud was less than it actually was and that she used the term “pled no contest” instead of “pled guilty.”

The Wyoming Board representatives informed Dr. Riley that they would seek revocation of her license unless she requested voluntary relinquishment.²³ Pursuant to a final agency action and public Order of the Wyoming Board, Dr. Riley voluntarily relinquished her Wyoming medical license in April 2011.²⁴ This action was reported to various entities, including the National Practitioner Data Bank, the Federation of State Medical Boards and local hospitals.²⁵

Fraudulently or deceptively obtaining a license, engaging in unprofessional conduct, or making false representations on a license application, are acts that would be grounds for disciplinary action under the Medical Practice Act if committed in Maryland. The acts for which Dr. Riley was disciplined in Utah and Wyoming, therefore, constitute grounds for disciplinary action in Maryland under Section 14-404.²⁶

(5) Dr. Riley Willfully Made False Statements in her Licensure Applications

Dr. Riley’s misrepresentations and concealment of material facts on her applications in Maryland,²⁷ Utah and Wyoming were also willful and falsely represented the true circumstances of her criminal acts. Her mischaracterization and minimization of her criminality was voluntary and intentional. The reality, as Dr. Riley well knew, was that she actively joined in crimes of forgery, larceny and criminal impersonation on multiple occasions. Her statement that she pled

²³ PD, p. 13, #28.

²⁴ PD, p. 13, #27.

²⁵ PD, p. 13, #29; PD, p. 42.

²⁶ PD, pp. 41-44.

²⁷ PD, p. 11, # 17. At the pre-hearing conference before the ALJ, Dr. Riley stipulated that her Maryland application contained misrepresentations.

no contest was not accidental or inadvertent. Nothing in the court-martial records demonstrates any reason why Dr. Riley might have believed that she pled no contest. Her court-martial records indisputably show that she was clearly aware that she was pleading guilty.

(6) Dr. Riley Engaged in Unprofessional Conduct in the Practice of Medicine

By lying on her application, Dr. Riley not only intentionally obscured her own active participation in crimes of criminal impersonation, forgery and larceny, she deliberately and unethically withheld from the Board crucial information needed to make an informed decision on her fitness for licensure. In so doing, Dr. Riley engaged in unprofessional conduct in the practice of medicine.²⁸

Based on her medical and surgical management of the patient's abortion procedure, Dr. Riley also engaged in unprofessional conduct in the practice of medicine. Dr. Riley failed to ensure that an appropriate contingency plan was in place for patients in case of potential complications at the Elkton facility, and acted unprofessionally by transporting a patient with a ruptured uterus and perforated bowel by car to the hospital, and by delaying at least an hour and a half before transporting the patient after the onset of these life threatening complications.

The facts pertaining to Dr. Riley's professional background and experience, her employment and contract with Steven Brigham, M.D. and American Women's Services ("AWS"), the methods and process by which second and third trimester pregnancy termination procedures were initiated in New Jersey and completed in Elkton, Maryland by AWS on patients, including the 18 year-old patient in this case, are largely undisputed.²⁹ Following her emergency admission to Union Hospital in Elkton, this patient was subsequently air-lifted to a

²⁸ PD, pp. 44, 45, 46.

²⁹ PD, pp. 14-19, # 32-59, 69-70; PD, pp. 48-52. Dr. Riley filed exceptions to some of these factual findings. To the extent these factual findings are relevant, the Board addresses the concerns below in its discussion of the parties' Exceptions.

tertiary care center in Baltimore, where an exploratory laparotomy, uterine repair, bowel resection and anastomosis were successfully performed. These facts are also undisputed.³⁰

Dr. Coles, the expert witness for the State, testified that Dr. Riley was the physician providing the services at the Elkton facility, and therefore had a professional responsibility to assess existing policies or procedures for how to handle an emergency should one occur. For example, questions of which physician would be in charge, who would be called, how patient transport would be arranged and to where the patient would be sent were all essential components of a plan to provide the best and most safe care for her patients. The Board agrees. By simply assuming that her employer, Dr. Brigham, had such protocols in place, when he did not, Dr. Riley's assessment was incorrect and incomplete. Dr. Riley admitted in a Board interview that she did not discuss emergency procedures with Dr. Brigham and that after rupturing the patient's uterus, she had a debate with Dr. Brigham on how to transport the patient to the hospital. Her failure to ensure an adequate contingency plan not only compromised the life and safety of the patient in this case, but posed similar undue risks for all potential patients who entrusted themselves to Dr. Riley's care at the Elkton facility.

It is undisputed that Dr. Riley decided to transport the patient to Union Hospital in Dr. Brigham's rental car after encountering complications about 10-15 minutes into the procedure. Her decision to do so was not only flawed, life-threatening and unprofessional, but showed poor clinical judgment. As Dr. Coles testified, a ruptured uterus and perforated bowel are complications that could change a patient's condition for the worse at any given moment. The Board agrees with Dr. Coles that the patient could have suffered internal hemorrhage and bled into the abdominal cavity, and could have gone into shock or cardiac arrest at any time after her critical injuries were sustained and before her arrival at the Emergency Room ("ER") ramp. Even

³⁰ PD, p. 26, # 129-134.

Dr. Poppema, who testified as an expert witness on behalf of Dr. Riley, stated that Dr. Riley could not have provided any meaningful medical response to a catastrophic change in the patient's condition from the back seat of a car.

Once she identified the complications and realized the need for a hospital transfer, Dr. Riley should have instructed staff to call 911 so an ambulance could be en route. In the meantime, Dr. Riley's professional obligation was to address the patient's needs, try to keep her stable, inform her family of the situation, call the hospital and contact the ER physicians to alert them that the patient was on the way. The patient's grave condition and the nature of her injuries, not the proximity of the hospital, were the crucial factors. Dr. Riley, however, failed to call 911 or any emergency services. Instead, the patient was fitted with a blood pressure cuff and pulse oximeter, and Dr. Riley sat with and monitored the patient's vital signs in the car while Dr. Brigham drove the car to the hospital.

Dr. Riley's decision was also faulty and unprofessional because it involved lifting up a consciously sedated and slumped-over patient in order to move her from the operating table to a wheelchair, from a wheelchair to the car, and from the car onto another wheelchair before arrival at the Union Hospital ER. Given the nature of the patient's injuries and her level of sedation, it was difficult to even get her dressed to transfer her to a wheelchair and a car. The patient's bowel, usually in a sterile compartment in the abdominal cavity, was protruding in to her unsterile vagina. Dr. Coles opined that lifting the patient up, putting her in a seated position and moving her around in this manner risked further prolapse of bowel into that area and causing injury to a longer length of bowel. The patient should have been transported lying down on a stretcher in an ambulance, and then transferred to a bed in the ER.³¹ According to Dr. Coles, ambulance emergency personnel can ensure that a sedated patient in a supine position is

³¹ PD, pp. 71-72.

breathing well, can ensure that CPR is performed if needed, and can allow smooth entry into hospital on arrival. The Board agrees. The Board also finds that ambulance responders can establish better communications with ER staff and relay critical medical information in advance of arrival.

Dr. Poppema, Dr. Riley's expert witness, also admitted that professional standards require a patient's prompt transfer to the ER right after such a surgical complication is discovered. She opined that a delay of two hours or even an hour and a half, in transferring the patient would be too long and would breach professional standards. It is undisputed that the patient arrived at the ER ramp at about 1:23 p.m. on August 13, 2010. Based on the contemporaneous report of events given by Dr. Riley to the staff, the ER record documented that the onset of the perforation occurred at 11:30 a.m., a time frame that is consistent with statements from the patient's mother and boyfriend to Board staff that they waited for about two hours while the patient was undergoing the procedure. This meant that at least an hour and forty five minutes elapsed before Dr. Riley transported the patient to the hospital after the perforations occurred, a significant delay that subjected the patient to even greater risk of calamity.

In records, procedure notes and testimonial interviews, Dr. Riley gave divergent accounts of the start time of the procedure to Board staff. In the typed summary of the procedure faxed to the Board on August 23, 2010, she listed the start time as 11:00 a.m. In a handwritten procedure note completed at 2:45 p.m., she listed the start time as 1:00 p.m. During a telephone interview on August 24, 2010, Dr. Riley stated that she began the patient's procedure at approximately 11:00 a.m. After the interview, Dr. Riley faxed the medical record again to the Board with a correction stating that the start time was 12:00 p.m. Dr. Riley's typed and handwritten notes are neither reliable nor credible, and the Board disregards them. Dr. Poppema, however, ignored the

inherent contradictions in Dr. Riley's written and oral responses to the Board, considered only the 1:00 p.m. start time, and opined at the hearing that Dr. Riley acted expeditiously in getting the patient to the hospital. Dr. Poppema's assumptions are contrary to the ER record.

The Board agrees with the ALJ that Dr. Riley was not required to have her own transfer arrangements with an accredited local hospital in order to perform surgical procedures at the Elkton facility.³² The Board also finds that Dr. Riley's actions outside of the ER entrance of the hospital, while unorthodox, did not unduly impede or delay hospital staff from attending to the patient.³³ Dr. Riley's association with and assistance to Dr. Brigham in transporting patients from New Jersey to Maryland for the completion of their abortion procedures raises serious concerns about her professional and personal judgment. Nevertheless, the Board does not find that by so doing, she herself aided and abetted Dr. Brigham in evading New Jersey laws or in engaging in the unauthorized practice of medicine in Maryland. There is insufficient evidence that Dr. Brigham violated New Jersey law; and in any case, the Board is reluctant to rule on the application of another state's law to a person who is not even a Maryland licensee. With regard to aiding an unlicensed person in the practice of medicine, there was insufficient evidence presented in this case that such unlicensed practice took place.

Similarly, the Board finds that there is insufficient evidence that Dr. Riley herself infringed on the patient's autonomy in this case, or that she exposed patients to unnecessary risk solely by participating in this practice arrangement by which Dr. Brigham performed one part of the procedure in New Jersey and misled the patients as to where it was that Dr. Riley would perform the rest of the procedure. Were there sufficient evidence that Dr. Riley had actual knowledge of this scheme, the Board might have ruled differently.

³² PD, pp. 68-69.

³³ PD, pp. 74-77. The Board also declines to grant the State's exception on this issue. (State's Exceptions at 5-7)

Dr. Riley's Exceptions

Dr. Riley argues in her exceptions that the evidence does not support findings that she intended to deceive the Board because she disclosed the fact of her conviction and was unaware of the legal distinction between a guilty plea and a no contest. (Riley Exceptions at 4-6) Her explanation of her criminal conviction and her subsequent response to the Board analyst's follow-up questions, however, show that Dr. Riley's selective blend of truth and fiction in her answers to the Board was not only deceptive, but was intended to induce the Board to act to its detriment by giving her a medical license. That she disclosed a few true statements about her conviction along with other completely false statements on her applications is not remotely exculpatory.

Moreover, the military judge painstakingly explained, and Dr. Riley clearly understood, the meaning and implications of her guilty plea. In light of Dr. Riley's repeated admissions of her guilt to the military court, it strains belief that she misunderstood the significance of her plea or was unaware of the differences between a guilty plea and a plea of no contest. The evidence is overwhelming that she intended to deceive the Board, to create a false impression of the seriousness of her crimes and to avoid Board scrutiny. Her exceptions have no merit.

Dr. Riley also argues that there was no evidence of why the Wyoming Board accepted her relinquishment of her license. (Riley Exceptions at 4-5) The Board rejects this exception. Findings in both the Utah and Wyoming Orders conclusively show that the licensing authorities in these states based their decisions to discipline Dr. Riley on a comparison of the court-martial information in Army documents and the false information in her licensure applications. Dr. Riley relinquished her Wyoming license in lieu of revocation because Wyoming Board representatives confronted her with their belief that her conduct involved violations of the Wyoming Practice

Act and unprofessional conduct using a false, fraudulent or deceptive statement on her 2008 application. Dr. Riley argues that she did not have the financial means to contest the threat of revocation in Wyoming, but she presented no evidence about this issue; in any case, a lack of financial resources is not a factor that would cause this Board to disregard Dr. Riley's voluntary act in relinquishing her Wyoming license.

Similarly, the record shows that the Utah licensing division also relied on the Army court-martial documents in seeking discipline, contrary to Dr. Riley's exception. (Riley Exception at 5) The specific charges issued by the Utah licensing division were based on information from the Maryland Board and from the Army. In the final Stipulation and Order, Dr. Riley admitted that the Army documents showed her direct involvement in the fraudulent criminal actions and differed from her representations on her licensure application. She also admitted that her acts constituted unlawful conduct (including obtaining a license through the use of fraud, forgery, or intentional deception, and misrepresentation). The Board, therefore, denies this exception.

Dr. Riley willfully, voluntarily and intentionally made multiple false statements on her licensure applications. The ALJ found, and the Board finds, that she willfully made false statements on her licensure applications and engaged in unprofessional conduct in the practice of medicine. The Board denies her exceptions on these issues. (Riley Exceptions at 6-7)

Dr. Riley argues that the ALJ misapplied the law and contradicted himself by concluding that she committed unprofessional conduct by failing to ascertain the existence of a contingency plan and simultaneously concluding that she was not required to have a transfer arrangement with a local hospital for surgical complications. (Riley Exceptions at 8-9) Dr. Riley herself conflates two separate issues. An adequate contingency plan might include, but would not

require, a formal transfer arrangement with an accredited hospital. Rather, such a plan would establish, at a minimum, in advance of any surgical complication, what emergency protocols would be followed, who would be in charge, who would be called to transport a patient and to what facility would the patient be transferred. Had such a predetermined plan existed at the Elkton facility on August 13, 2010, the ad hoc and haphazard responses by Dr. Riley and Dr. Brigham would not have further jeopardized this critically injured patient.

Dr. Riley had a professional responsibility to verify the existence of a contingency plan before beginning a late second trimester abortion procedure with potential complications such as uterine perforation. Dr. Riley is a highly intelligent, sophisticated physician and West Point graduate. Her assumption that a contingency plan was in place, without more, demonstrated poor clinical judgment and also constituted unprofessional conduct in the practice of medicine. The Board rejects her exception.

Dr. Riley's argument that the ALJ gave undue weight to Dr. Coles' opinion simply because she was a "local" physician (Riley Exceptions at 9), is similarly without merit. Using its own expertise, the Board agrees with Dr. Coles that Dr. Riley handled the complications of uterine and bowel perforations unprofessionally by transporting this critically injured and consciously-sedated patient in a car to the hospital. Dr. Coles based her opinion on the increased significant risks to the patient by this mode of travel, the nature of the patient's surgical injuries and the real potential for a sudden disastrous downturn in her medical status. Dr. Coles correctly identified the limitations on Dr. Riley's ability to respond adequately to any catastrophic change in the patient's condition in a car vis-a vis the ability of ambulance emergency responders to ensure that the patient was properly positioned on a stretcher, breathing well, and ensure the performance of CPR if needed as well as more efficient communication with the ER. Even Dr.

Poppema admitted that Dr. Riley could not provide a meaningful medical response to any precipitous change in the patient's condition.

The ALJ found that all of these factors were significant.³⁴ Dr. Coles' expert opinion on this issue was more logical and persuasive than that of Dr. Poppema, because Dr. Poppema simply discounted the increased risks altogether based on her assumption of continued clinical patient stability during the car ride to the hospital. Dr. Poppema also assumed that the start time of the procedure was 1:00 p.m., despite Dr. Riley's multiple and contradictory versions of the time frame in the medical record. In addition, Dr. Poppema ignored the official ER record documenting that the onset of the perforation occurred at 11:30 a.m. Dr. Riley's irresponsible and unprofessional actions were not justified because of her purported belief that a car would get to the hospital faster, and there was no evidence that Dr. Riley believed that an ambulance would take longer. Dr. Riley's unprofessional response could have cost the patient her life. Fortunately, the patient did not go into shock or cardiac arrest, and survived after transfer to a tertiary care center and undergoing major reparative surgery, without the need for a hysterectomy or a colostomy. The Board rejects Dr. Riley's exception.

Dr. Riley excepts to all of the ALJ's findings based on citations to Wikipedia (#33, 61, 89, 101 and 131-132) and WebMD (#51(b), 72, 74, 75 and 89). (Riley Exceptions at 3-4) The Board has carefully considered all of these findings and the basis for Dr. Riley's exceptions. Although the sources may be questionable, the information gleaned by the ALJ was correct. Based on "its expertise, technical competence, and specialized knowledge in the evaluation of evidence," *see* Md. Code Ann., State Gov't § 10-213(i), the Board finds that Dr. Riley's exceptions are without merit. The Board has also reviewed the ALJ's findings # 18, 28, 37-38, 48, 52-53, 60, 62-68, 71-72, 76-86, 90, 93-94, 99-100, 105-106, 123, and 127, and Dr. Riley's

³⁴ PD, pp. 71-72.

exceptions to these findings. Throughout this Final Decision and Order, the Board has indicated in footnotes similar findings made by the ALJ.³⁵ The Board declines to address any exceptions pertinent to proposed findings that the Board does not adopt.

In any case, the ALJ's Proposed Decision is not the issue. The Board makes the findings of fact. None of Dr. Riley's exceptions convince the Board to modify its findings set forth on pages 2-14 above.

The Board also rejects Dr. Riley's exception and renewed objections to the ALJ's Pre-Hearing Conference Report and Order of June 1, 2012. The ALJ properly admitted the Board's investigative documents, the complaint and interview of a complainant, the patient's medical records from the tertiary care center, orders involving Dr. Brigham and Dr. Riley, security and interview documents from Union Hospital in Elkton, transcripts of the Board's interviews with the patient, her mother and her boyfriend, interviews with the emergency physicians and nursing staff at Union Hospital, lab reports, expert reports, and documents pertaining to the New Jersey Board action against Dr. Brigham. The ALJ correctly ruled that all of these exhibits were admissible because they were relevant, competent, credible and reliable.

Under Maryland law, evidence may not be excluded solely on the basis that it is hearsay. Md. Code Ann., State Gov't § 10-213(c)(2009). An ALJ may admit probative evidence "that reasonable and prudent individuals commonly accept in the conduct of their affairs and give probative effect to that evidence." *Id.*, § 10-213(b). Maryland appellate courts have also held that hearsay evidence is admissible in contested cases before an administrative body and, if credible and of sufficient probative force, may be the sole basis for the decision of the administrative body. *See, e.g., Kade v. Charles, H. Hickey Sch.*, 80 Md. App. 721 725 (1989); *Parham v. Department of Labor, Licensing & Registration*, 189 Md. App. 604, 618 (2009) ("if [hearsay] is

³⁵ See p. 2, Footnote 1.

to be relied on as the basis for an administrative decision, the hearsay must be competent and have probative force.”) The Board agrees with and will not disturb the ALJ’s evidentiary rulings.

CONCLUSIONS OF LAW

Based on the foregoing facts, the Board concludes that Dr. Riley (1) fraudulently and deceptively obtained a medical license in Maryland, Utah and Wyoming, in violation of H.O. § 14-404(a)(1); (2) engaged in unprofessional conduct in the practice of medicine when she provided fraudulent and deceitful answers on her licensure applications, and made willfully false representations on her applications, failed to ensure that an appropriate contingency plan was in place at the Elkton facility to respond to medical and surgical emergencies, used the back seat of a car to transport a critically injured patient to the hospital, and delayed the transfer for at least an hour and a half after the critical injuries were sustained, in violation of H.O. § 14-404(a)(3)(ii); (3) was disciplined by the licensing authorities for Utah and Wyoming for acts that would be grounds for disciplinary action in Maryland under § 14-404(a), in violation of H.O. § 14-404(a)(21); and (4) willfully made a false statement or representation when she made the applications for licensure, in violation of H.O. § 14-404(a)(36).

SANCTION

The Board will permanently revoke Dr. Riley’s medical license because it should never have granted her a license in the first place. In addition, Dr. Riley’s unprofessional actions with regard to the patient before and after she perforated the patient’s uterus and bowel are also of significant concern to the Board. Dr. Riley flirted with medical catastrophe by failing to ensure an adequate contingency plan was in place, by transporting the patient to the hospital by car instead of by ambulance, and by delaying the patient’s transfer at least an hour and a half. Her

entire approach to her medical and professional obligations jeopardized her patient's life. In the Board's view, her flawed judgment and unprofessional conduct in this regard would also justify revocation of her medical license.

Dr. Riley's application for licensure in Maryland was replete with blatant lies. Her fraudulent and deceitful statements induced the Board to grant her a license to its detriment. Her application is but the latest example of an established 20-year pattern of fraud and deception in which Dr. Riley has engaged during her professional career. Following her court-martial in 1990 and dishonorable discharge from the Army for crimes involving fraud, forgery and larceny, Dr. Riley's subsequent medical career was facilitated by additional fraud, deception and lies. Dr. Riley's dishonesty and lack of integrity is entrenched. For this reason alone, Dr. Riley is not now, and never was, entitled to licensure in this State. Had the Board known of the gravamen of her criminal offenses, and the enormity of her deceptive and fraudulent cover-up in all of her licensure applications, the Board would have denied her application for licensure in Maryland.

In her prior applications to Utah in 2004 and to Wyoming in 2008, Dr. Riley perfected a narrative of creative distortions as a way to sidestep her criminal past. By concocting a mélange of outright lies, partial truths, misstatements and omissions on those applications, and by failing to come clean about the extent of her own criminal culpability, Dr. Riley succeeded in obtaining medical licenses in those states.

In her Maryland application in 2010, Dr. Riley again utilized a similar false and fraudulent narrative and concealed the true nature and extent of her criminality in order to facilitate her licensure goals and prevent the Board from making an informed decision on her application. In so doing, Dr. Riley once more succeeded in obtaining a medical license by fraud, deception and misrepresentation.

The Medical Practice Act grants the Board authority and discretion to revoke a medical license. Md. Code Ann., Health Occ. § 14-404(a). Permanent revocation of a medical license is “plainly within the Board’s statutory authority.” *Shirazi v. Md. State Bd. of Physicians*, 199 Md. App. 469, 482 (2011). Contrary to Dr. Riley’s arguments in her exceptions (Riley Exceptions at 9-10 and Brief Concerning Proportionality of Penalty), the grounds for reversing an agency sanction do not include disproportionality. Md Code Ann., State Gov’t § 10-222(h); *see also Maryland Aviation Admin. v. Noland*, 386 Md. 556, 575 (2005); *Maryland Transp. Auth. v. King*, 369 Md. 274, 291 (2002) (“the grounds set forth in § 10-222(h) for reversing or modifying an adjudicatory agency decision do not include disproportionality or abuse of discretion, unless, under the facts of a particular case, the disproportionality or abuse of discretion is “extreme and egregious.”

In view of the fraudulent and deceptive nature of Dr. Riley’s criminal conduct, her demonstrated lack of candor and integrity on her applications to the Board and to Utah and Wyoming, and her demonstrated propensity for dishonesty and misrepresentation, Dr. Riley’s unprofessional conduct is not remediable. Moreover, there is no basis whatsoever for comparing revocation in her case to sanctions in other Board cases that arose out of very different circumstances. (Riley Brief at 4-10). In light of the unprofessional manner in which she treated this critically damaged patient, the Board does not believe that Maryland patients would be safe in the hands of this physician. Dr. Riley’s fraudulent acts and unprofessional treatment of the patient merit the permanent revocation of her medical license in this State.

The United States Supreme Court cases cited by Dr. Riley in her brief are also inapposite.³⁶ A licensee has no entitlement or “absolute vested right to practice medicine, but only a conditional right which is subordinate to the police power of the State to protect and

³⁶ PD, pp. 80-84.

preserve the public health.” *Comm’n on Medical Discipline v. Stillman*, 291 Md. 390, 405-06 (1981). Accordingly, the Board rejects Dr. Riley’s exceptions and constitutional arguments on this issue.

ORDER

It is hereby **ORDERED** that the Board’s October 5, 2011 amended charges filed against Nicola I. Riley, M.D., License No. D71213, based on the specific findings set forth on pages 2-14 of this Final Decision and Order, be **UPHELD**; and it is further

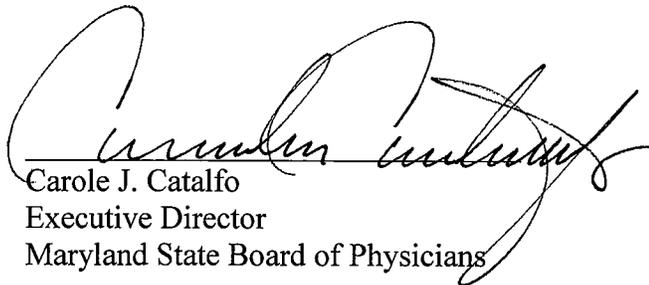
ORDERED that the medical license of Nicola I. Riley, M.D., be **PERMANENTLY REVOKED**; and it is further

ORDERED that Dr. Riley shall not ever apply for licensure or reinstatement of her medical license to the Board or any successor agency; and it is further

ORDERED that the summary suspension of Dr. Riley’s medical license imposed by the Board on August 31, 2010, under Md. Code Ann., State Gov’t § 10-226(c)(2) is **TERMINATED** as moot, and it is further

ORDERED that this is a Final Decision and Order of the Board, and as such, is a **PUBLIC DOCUMENT** pursuant to Md. Code Ann., State Gov’t § 10-611 *et seq.* (Repl. Vol. 2009).

5-6-13
Date


Carole J. Catalfo
Executive Director
Maryland State Board of Physicians

NOTICE OF RIGHT TO PETITION FOR JUDICIAL REVIEW

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

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

**Maryland State Board of Physicians
Christine A. Farrelly, Deputy Director, Compliance and Licensure
4201 Patterson Avenue
Baltimore, Maryland 21215**

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

**Noreen M. Rubin
Assistant Attorney General
Department of Health and Mental Hygiene
300 West Preston Street, Suite 302
Baltimore, Maryland 21201**