BEFORE THE
MEDICAL BOARD OF CALIFORNIA
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA

In the Matter of the Statement of Issues Against: GREGORY CHARLES KHOURY, M.D., now known as BRIAN WALKER, M.D., Respondent.	Case No. 800-2017-036226 OAH No. 2018030775

DECISION AFTER NON-ADOPTION

Administrative Law Judge ("ALJ") Juliet E. Cox, State of California, Office of Administrative Hearings, heard this matter on August 3, 2018, in Oakland, California.

Deputy Attorney General Alice W. Wong represented complainant Kimberly Kirchmeyer, Executive Director of the Medical Board of California.

Respondent Brian Walker, M.D., was present representing himself.

The matter was submitted for decision on August 3, 2018.

On August 27, 2018 ALJ Cox issued her Proposed Decision. Panel B of the Medical Board of California ("Board") declined to adopt the Proposed Decision and on October 30, 2018 issued its Order of Non-Adoption of Proposed Decision and afforded the parties the opportunity for written argument. The Board having read and considered the administrative record and the written arguments submitted by the parties, hereby renders its decision in this matter.

FACTUAL FINDINGS

1. Respondent Brian Walker, M.D., practices medicine in Washington. Before he began practicing in Washington, he applied to the Medical Board of California (Board) in May 2017, using his former name[1] (Gregory Charles Khoury), for a physician's and surgeon's certificate authorizing him to practice medicine in California. The Board notified respondent by letter dated August 14, 2017, that it would deny this application. Respondent requested a

[1] For personal reasons, respondent changed his name to Brian Walker after submitting his application to the Board. The conviction described below in Finding 11 occurred when he used his former name; he holds the licenses described below in Finding 19 in his current name.

hearing.

2. On November 3, 2017, acting in her official capacity as Executive Director of the Board, complainant Kimberly Kirchmeyer filed the statement of issues in this matter. The statement of issues alleges that respondent should not receive a California physician's and surgeon's certificate because he has been convicted of a crime that relates substantially to the practice of medicine.

Professional Experience

3. Respondent graduated from the University of Texas Medical School at San Antonio in 1980. He undertook a one-year internship, including general medicine training, at the University of Oklahoma Medical Center in Oklahoma City, and then a three-year psychiatry residency at Duke University Hospital in Durham, North Carolina. He received a license to practice medicine in Oklahoma in 1981, and in North Carolina in 1982.

4. After completing his residency in North Carolina, respondent moved to New Orleans and received a license to practice medicine in Louisiana in 1984. Between 1984 and 2007 respondent practiced medicine in New Orleans, first in the Jo Ellen Smith Psychiatric Hospital and later in a private clinic he established to focus on treating patients with serious medical and psychiatric illnesses.

5. In 2007, respondent relocated to Oklahoma City. He continued his private practice, and also served developmentally disabled patients with comorbid psychiatric illness through the Chickasha Opportunity Center, Inc. (COCI), until he ceased practice because of the criminal conviction described below in Finding 11.

6. While he was in prison, as described below in Finding 12, respondent did not practice medicine. He did tutor other inmates for high school equivalency examinations, and he also gave lectures about personal health and wellness.

7. After his release from prison, respondent provided mental health care in a community clinic in Davenport, Oklahoma. In addition, he served as a child custody evaluator.

8. In 2015, respondent began working as an adjunct professor in the Adult School of Arts and Sciences at Mid-America Christian University in Oklahoma City. He revised curricula for two psychology courses: one on human development and one on multi-cultural treatment planning. He taught classroom and online courses, and became the university's Program Director for its Health Care Management degree.

9. Respondent left Mid-America Christian University in September 2017 to take a position as a physician at the Washington State Penitentiary in Walla Walla, Washington. Respondent enjoys working in prison and believes his own experience of incarceration gives him a perspective on his patients' experience that few other physicians share. He seeks licensure in California because he has family in California, and hopes to take a similar position in the California Department of Corrections and Rehabilitation.

10. Respondent is board-certified in psychiatry and neurology. He last renewed his certification in 2017.

Criminal Conviction

11. On August 18, 2010, respondent was convicted in the United States District Court for the Eastern District of Louisiana of a felony violation of section 1347 of title 18 of the United States Code (health care billing fraud). The crime occurred between 2004 and early 2006, when respondent's billing staff at his New Orleans clinic billed various public and private health agencies for patient treatment at the clinic over the previous several years. Respondent and his clinic staff had rendered care to the patients, but violated the law by overbilling for that care.

12. The court sentenced respondent to 30 months in federal prison, followed by three years' probation. In addition, the court ordered respondent to pay more than $1 million in restitution to the federal Medicare program as well as to various private insurance carriers. Respondent served his prison term, and completed his probation without incident in April 2016. He makes regular payments on his restitution obligation.

13. Because of his conviction, respondent is ineligible to provide services paid by the federal Medicare or Medicaid programs.

License History

14. Respondent no longer holds a medical license in North Carolina or in Louisiana. He had ceased practicing medicine in both states well before the criminal conviction described above in Finding 11. No evidence established that either state's licensing agency took disciplinary action against respondent because of that conviction.

15. Respondent surrendered his license to practice medicine in Oklahoma in 2011, because of the conviction described above in Finding 11.

16. Effective August 16, 2013, the Oklahoma State Board of Medical Licensure and Supervision (Oklahoma State Board) reinstated respondent's Oklahoma license, but restricted him to practicing medicine only as an employee of the Oklahoma Department of Corrections.[2] The Oklahoma State Board also imposed other monitoring conditions on respondent's renewed license.

17. In May 2014, the Oklahoma State Board modified its restrictions on respondent's Oklahoma license to permit respondent to practice in a community psychiatric clinic; to permit him to render expert opinions in child custody litigation; and to permit him to establish a church-based community mental health clinic. Respondent pursued the first two of these three opportunities, as described above in Finding 7. The church-based clinic did not open, because the priest who had pushed to establish it was reassigned to a new parish.

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[2] Respondent never actually worked in Oklahoma's prison system.

18. The Oklahoma State Board terminated its restrictions on respondent's Oklahoma license effective May 12, 2016. At the time of the hearing, this license was active and was scheduled to expire August 1, 2018.

19. When he applied in May 2017 to the Board, respondent held only his Oklahoma license. He currently holds a physician and surgeon license issued by the Washington State Department of Health, which is active and is scheduled to expire March 6, 2020. He also holds a physician license issued by the Alaska State Medical Board, which is active and is scheduled to expire December 31, 2018.

References

20. Respondent offered many character reference letters from persons who have known him personally and professionally.

a. Joseph P. Balkenbush has known respondent since childhood. Balkenbush has been a trial court judge in Oklahoma, and has served as ethics counsel for the Oklahoma Bar Association. When respondent provided child custody evaluations, as described above in Finding 7, he did so for Balkenbush's family law practice. Balkenbush states that respondent has offered valuable care and counsel to Balkenbush, to Balkenbush's family law clients, and to other mutual friends.

b. Charles D. Crow directs the Master of Ministry program at Mid-America Christian University, and worked there with respondent on course development and implementation. Crow notes that respondent has "broad experience" that gives him "a rich appreciation of cultural diversity and respect for individuals."

c. Jared Folmsbee is a high school teacher who has known respondent for about 10 years. Folmsbee states that respondent has experienced great adversity, but has "paid his debt to society" and has taken the opportunity to become a stronger person.

d. Bob Glaze is the President and General Manager of Southwest Radio Ministries, and has been a pastor and educator for more than 45 years. Respondent treated Glaze's late wife successfully for chronic pain and for panic disorder. Glaze has maintained a friendly relationship with respondent and believes respondent to have a strong character.

e. Joe Glickman, Jr., M.D., has been respondent's friend for more than 40 years. Dr. Glickman helped respondent stay up-to-date on continuing medical education while respondent was in prison.

f. S. Craig Glickman also has known respondent for about 40 years. Respondent has treated Glickman's son, and was "professional, caring and indispensably helpful." Glickman believes respondent to have been wrongly convicted, but notes that respondent accepted the conviction and sentence "with grace, dignity and humility."

g. Thomas Hannon is Executive Director of COCI, described above in Finding 5. Hannon has high praise for respondent, contrasting respondent very favorably with

other clinicians who served COCI's clientele simply by writing prescriptions "for the medication de jour." Respondent took time to listen to his patients who also were COCI clients, and to learn how to reach many of them despite their intellectual disabilities. Hannon understands that respondent committed a crime, but urges the Board to permit respondent to practice medicine in California.

h. Michael Hurdman is a professor at Mid-America Christian University, and worked with respondent there. Hurdman states that respondent showed himself to be a "man of integrity and high standards of practice in every endeavor."

i. Kevin Khoury, M.D., is respondent's younger brother. Dr. Khoury has worked primarily in medical administration rather than in direct patient care, and helped respondent establish mental health service at the Davenport Medical Clinic as described above in Finding 7. Respondent lived with Dr. Khoury for several years after his release from prison, and Dr. Khoury describes how respondent rebuilt his life "with a very different foundation."

j. Steve Marcus knew respondent when respondent worked at the Davenport Medical Clinic, although the evidence did not establish Marcus's role at the clinic. Marcus states that respondent provided significant pro bono mental health service at the clinic, with "positive feedback" from patients.

k. Jennifer Maxfield-DeCarlo is the Program Director of the Adult School of Psychology and Counseling at Mid-America Christian University. She knows respondent from his work in that program and believes that he brought strong clinical skills to the program.

l. John W. Nelson, M.D., collaborated with respondent in caring for patients with psychiatric disorders and chronic pain before respondent's conviction. Dr. Nelson is unfamiliar with the reasons for respondent's conviction, but states that as a clinician respondent provided excellent patient care.

m. Ralph Reyes was the priest who attempted to add a mental health clinic to his parish's church-based medical clinic, as described above in Finding 17. Fr. Reyes looked forward to having respondent provide care in the clinic, and appreciated respondent's willingness to serve.

n. Paula Schick is a physician assistant who has known respondent for several years. She believes he has shown strength, and that he enjoys serving his community through teaching and medical care.Jason S. Smitherman knew respondent first as Smitherman's son's physician, but came later to know him socially through church and community activities. Smitherman has strong praise for respondent's clinical skills, as well as for respondent's rehabilitation and commitment to community service after his release from prison.

o. Frank Stotts has known respondent for only about two years, but took a five-day cross-country road trip with respondent in 2017. Stotts states that respondent has great integrity, and listens well both to friends and to strangers.

21. Respondent also provided brief email correspondence he had received from a former patient, and from several former students, thanking him for his thoughtful and effective care and teaching.

LEGAL CONCLUSIONS

1. The Board may deny an application for a physician's and surgeon's certificate if the applicant has done anything that would have constituted cause for discipline if she or he already held a certificate. (Bus. & Prof. Code, §§ 480, subd. (a)(3)(A), 2221, subd. (a).)

2. Conviction of a crime arising from medical practice is unprofessional conduct for a California physician. (Bus. & Prof. Code, §§ 480, subd. (a)(1), 2234, subds. (a), (e), (f), 2236.) The matters stated in Finding 11 establish cause for the Board to have denied respondent's application for a California physician's and surgeon's certificate.

3. As an alternative to denying respondent's application, the Board may grant the application; revoke the certificate; stay the revocation; and place respondent on probation. (Bus. & Prof. Code, §§ 488, subd. (b), 2221, subd. (a).) The Board's Disciplinary Guidelines (see Cal. Code Regs., tit. 16, § 1361) permit this outcome, with one year's suspension and at least seven years' probation, for a physician who has committed a felony relating to medical billing.

4. The matters stated in Finding 11 establish that more than 10 years have passed since the events that led to respondent's conviction and that eight years have passed since the conviction itself. In that time, as summarized in Findings 7 through 9 and 12, respondent has completed his sentence, completed a period of license restriction in Oklahoma, and practiced medicine in community-service clinics and in a prison. As stated in Finding 13, he remains under a significant billing restriction, which necessarily limits his employment opportunities.

5. Under all these circumstances, and considering as well the matters stated in Findings 19 through 21, a further period of probation is necessary to ensure public protection. The board, as well as respondent recognize the very serious nature of respondent's prior criminal conviction for health care fraud. Safeguards must be implemented to ensure respondent will not engage in improper billing practices. While the board acknowledges and appreciates respondent's successful completion of a lengthy period of criminal probation after his release from prison and substantial community work, respondent needs to demonstrate to the board, under monitored conditions, that he can practice without engaging in any violations of the Medical Practice Act. Imposition of a probationary license with certain terms and conditions such as a prohibition on solo practice and the usage of practice and billing monitors is not only consistent with the Board's Disciplinary Guidelines, but also ensures the public is adequately protected.

ORDER

The application of respondent Brian Walker, M.D., formerly known as Gregory Charles Khoury, M.D., for a physician's and surgeon's certificate is denied. However, applicant shall be

issued a probationary license for five (5) years with the following terms and conditions:

1. Solo Practice Prohibition

Respondent is prohibited from engaging in the solo practice of medicine. Prohibited solo practice includes, but is not limited to, a practice where: 1) respondent merely shares office space with another physician but is not affiliated for purposes of providing patient care, or 2) respondent is the sole physician practitioner at that location.

If respondent fails to establish a practice with another physician or secure employment in an appropriate practice setting within 60 calendar days of the effective date of this Decision, respondent shall receive a notification from the Board or its designee to cease the practice of medicine within three (3) calendar days after being so notified. The respondent shall not resume practice until an appropriate practice setting is established.

If, during the course of the probation, the respondent's practice setting changes and the respondent is no longer practicing in a setting in compliance with this Decision, the respondent shall notify the Board or its designee within 5 calendar days of the practice setting change. If respondent fails to establish a practice with another physician or secure employment in an appropriate practice setting within 60 calendar days of the practice setting change, respondent shall receive a notification from the Board or its designee to cease the practice of medicine within three (3) calendar days after being so notified. The respondent shall not resume practice until an appropriate practice setting is established.

2. Monitoring – Practice and Billing

Within 30 calendar days of the effective date of this Decision, respondent shall submit to the Board or its designee for prior approval as a practice and billing monitors, the names and qualifications of one or more licensed physicians and surgeons whose licenses are valid and in good standing, and who are preferably American Board of Medical Specialties (ABMS) certified in the specialty in which respondent will be practicing. A monitor shall have no prior or current business or personal relationship with respondent, or other relationship that could reasonably be expected to compromise the ability of the monitor to render fair and unbiased reports to the Board, including but not limited to any form of bartering, shall be in respondent's field of practice, and must agree to serve as respondent's monitor. Respondent shall pay all monitoring costs.

The Board or its designee shall provide the approved monitors with copies of the Decision(s) and Accusation(s), and a proposed monitoring plan. Within 15 calendar days of receipt of the Decision(s), Accusation(s), and proposed monitoring plan, the monitors shall submit a signed statement that the monitor has read the Decision(s) and Accusation(s), fully understands the role of a monitor, and agrees or disagrees with the proposed monitoring plan. If a monitor disagrees with the proposed monitoring plan, the monitor shall submit a revised monitoring plan with the signed statement for approval by the Board or its designee.

Within 60 calendar days of the effective date of this Decision, and continuing throughout probation, respondent's practice and billing shall be monitored by the approved monitors. Respondent shall make all records available for immediate inspection and copying on the premises by the monitor at all times during business hours and shall retain the records for the entire term of

probation.

If respondent fails to obtain approval of a monitor within 60 calendar days of the effective date of this Decision, respondent shall receive a notification from the Board or its designee to cease the practice of medicine within three (3) calendar days after being so notified. Respondent shall cease the practice of medicine until a monitor is approved to provide monitoring responsibility.

The monitors shall submit a quarterly written report to the Board or its designee which includes an evaluation of respondent's performance, indicating whether respondent's practices are within the standards of practice of medicine and billing, and whether respondent is practicing medicine safely, and billing appropriately. It shall be the sole responsibility of respondent to ensure that the monitors submit the quarterly written reports to the Board or its designee within 10 calendar days after the end of the preceding quarter.

If a monitor resigns or is no longer available, respondent shall, within 5 calendar days of such resignation or unavailability, submit to the Board or its designee, for prior approval, the name and qualifications of a replacement monitor who will be assuming that responsibility within 15 calendar days. If respondent fails to obtain approval of a replacement monitor within 60 calendar days of the resignation or unavailability of the monitor, respondent shall receive a notification from the Board or its designee to cease the practice of medicine within three (3) calendar days after being so notified Respondent shall cease the practice of medicine until a replacement monitor is approved and assumes monitoring responsibility.

In lieu of a monitor, respondent may participate in a professional enhancement program approved in advance by the Board or its designee, that includes, at minimum, quarterly chart review, semi-annual practice assessment, and semi-annual review of professional growth and education. Respondent shall participate in the professional enhancement program at respondent's expense during the term of probation.

3. Notification

Within seven (7) days of the effective date of this Decision, the respondent shall provide a true copy of this Decision and Accusation to the Chief of Staff or the Chief Executive Officer at every hospital where privileges or membership are extended to respondent, at any other facility where respondent engages in the practice of medicine, including all physician and locum tenens registries or other similar agencies, and to the Chief Executive Officer at every insurance carrier which extends malpractice insurance coverage to respondent. Respondent shall submit proof of compliance to the Board or its designee within 15 calendar days.

This condition shall apply to any change(s) in hospitals, other facilities or insurance carrier.

4. Supervision of Physician Assistants and Advanced Practice Nurses

During probation, respondent is prohibited from supervising physician assistants and advanced practice nurses.

5. Obey All Laws

Respondent shall obey all federal, state and local laws, all rules governing the practice of medicine in California and remain in full compliance with any court ordered criminal probation, payments, and other orders.

6. Quarterly Declarations

Respondent shall submit quarterly declarations under penalty of perjury on forms provided by the Board, stating whether there has been compliance with all the conditions of probation.

Respondent shall submit quarterly declarations not later than 10 calendar days after the end of the preceding quarter.

7. General Probation Requirements

Compliance with Probation Unit

Respondent shall comply with the Board's probation unit.

Address Changes

Respondent shall, at all times, keep the Board informed of respondent's business and residence addresses, email address (if available), and telephone number. Changes of such addresses shall be immediately communicated in writing to the Board or its designee. Under no circumstances shall a post office box serve as an address of record, except as allowed by Business and Professions Code section 2021(b).

Place of Practice

Respondent shall not engage in the practice of medicine in respondent's or patient's place of residence, unless the patient resides in a skilled nursing facility or other similar licensed facility.

License Renewal

Respondent shall maintain a current and renewed California physician's and surgeon's license.

Travel or Residence Outside California

Respondent shall immediately inform the Board or its designee, in writing, of travel to any areas outside the jurisdiction of California which lasts, or is contemplated to last, more than thirty (30) calendar days.

In the event respondent should leave the State of California to reside or to practice respondent shall notify the Board or its designee in writing 30 calendar days prior to the dates of departure and return.

8. Interview with the Board or its Designee

Respondent shall be available in person upon request for interviews either at respondent's place of business or at the probation unit office, with or without prior notice throughout the term of probation.

9. Non-practice While on Probation

Respondent shall notify the Board or its designee in writing within 15 calendar days of any periods of non-practice lasting more than 30 calendar days and within 15 calendar days of respondent's return to practice. Non-practice is defined as any period of time respondent is not practicing medicine as defined in Business and Professions Code sections 2051 and 2052 for at least 40 hours in a calendar month in direct patient care, clinical activity or teaching, or other activity as approved by the Board. If respondent resides in California and is considered to be in non-practice, respondent shall comply with all terms and conditions of probation. All time spent in an intensive training program which has been approved by the Board or its designee shall not be considered non-practice and does not relieve respondent from complying with all the terms and conditions of probation. Practicing medicine in another state of the United States or Federal jurisdiction while on probation with the medical licensing authority of that state or jurisdiction shall not be considered non-practice. A Board-ordered suspension of practice shall not be considered as a period of non-practice.

In the event respondent's period of non-practice while on probation exceeds 18 calendar months, respondent shall successfully complete the Federation of State Medical Board's Special Purpose Examination, or, at the Board's discretion, a clinical competence assessment program that meets the criteria of Condition 18 of the current version of the Board's "Manual of Model Disciplinary Orders and Disciplinary Guidelines" prior to resuming the practice of medicine.

Respondent's period of non-practice while on probation shall not exceed two (2) years.

Periods of non-practice will not apply to the reduction of the probationary term.

Periods of non-practice for a respondent residing outside of California, will relieve respondent of the responsibility to comply with the probationary terms and conditions with the exception of this condition and the following terms and conditions of probation: Obey All Laws; General Probation Requirements; Quarterly Declarations; Abstain from the Use of Alcohol and/or Controlled Substances; and Biological Fluid Testing.

10. Completion of Probation

Respondent shall comply with all financial obligations (e.g., restitution, probation costs) not later than 120 calendar days prior to the completion of probation. Upon successful completion of probation, respondent's certificate shall be fully restored.

11. Violation of Probation

Failure to fully comply with any term or condition of probation is a violation of probation. If respondent violates probation in any respect, the Board, after giving respondent notice and the opportunity to be heard, may revoke probation and carry out the disciplinary order that was stayed. If an Accusation, or Petition to Revoke Probation, or an Interim Suspension Order is filed against respondent during probation, the Board shall have continuing jurisdiction until the matter is final, and the period of probation shall be extended until the matter is final.

12. License Surrender

Following the effective date of this Decision, if respondent ceases practicing due to retirement or health reasons or is otherwise unable to satisfy the terms and conditions of probation, respondent may request to surrender his or her license. The Board reserves the right to evaluate respondent's request and to exercise its discretion in determining whether or not to grant the request, or to take any other action deemed appropriate and reasonable under the circumstances. Upon formal acceptance of the surrender, respondent shall within 15 calendar days deliver respondent's wallet and wall certificate to the Board or its designee and respondent shall no longer practice medicine. Respondent will no longer be subject to the terms and conditions of probation. If respondent re-applies for a medical license, the application shall be treated as a petition for reinstatement of a revoked certificate.

13. Probation Monitoring Costs

Respondent shall pay the costs associated with probation monitoring each and every year of probation, as designated by the Board, which may be adjusted on an annual basis. Such costs shall be payable to the Medical Board of California and delivered to the Board or its designee no later than January 31 of each calendar year.

This Decision shall become effective at 5:00 p.m. on March 22, 2019.

IT IS SO ORDERED February 22, 2019.

KRISTINA D. LAWSON, J.D., Chair
Panel B, Medical Board of California

BEFORE THE
MEDICAL BOARD OF CALIFORNIA
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA

In the Matter of the Statement of Issues Against:	)	
GREGORY CHARLES KHOURY now known as BRIAN WALKER	)	Case No.: 800-2017-036226
	)	OAH No.: 2018030775
Applicant	)	

ORDER OF NON-ADOPTION OF PROPOSED DECISION

The Proposed Decision of the Administrative Law Judge in the above-entitled matter has been **non-adopted.** A panel of the Medical Board of California (Board) will decide the case upon the record, including the transcript and exhibits of the hearing, and upon such written argument as the parties may wish to submit, including any argument as to whether the license should be issued, what probationary terms and conditions (if any) should be imposed to protect the public, and the sufficiency of Applicant's rehabilitative efforts. The parties will be notified of the date for submission of such argument when the transcript of the above-mentioned hearing becomes available.

To order a copy of the transcript, please contact Diamond Court Reporters, 1107 2nd Street #210, Sacramento, CA 95814. The telephone number is (916) 498-9288.

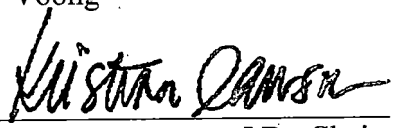
To order a copy of the exhibits, please submit a written request to this Board.

In addition, oral argument will only be scheduled if a party files a request for oral argument with the Board within 20 days from the date of this notice. If a timely request is filed, the Board will serve all parties with written notice of the time, date and place for oral argument. Oral argument shall be directed only to the question of whether the license should be issued and what if any terms and conditions of probation are necessary. Please do not attach to your written argument any documents that are not part of the record as they cannot be considered by the Panel. The Board directs the parties' attention to Title 16 of the California Code of Regulations, sections 1364.30 and 1364.32 for additional requirements regarding the submission of oral and written argument.

Please remember to serve the opposing party with a copy of your written argument and any other papers you might file with the Board. The mailing address of the Board is as follows:

MEDICAL BOARD OF CALIFORNIA
2005 Evergreen Street, Suite 1200
Sacramento, CA 95815-3831
(916) 263-2349
Attention: Kristy Voong

Date: October 30, 2018



Kristina D. Lawson, J.D., Chair
Panel B

BEFORE THE
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In the Matter of the Statement of Issues Against: GREGORY CHARLES KHOURY, M.D., now known as BRIAN WALKER, M.D., Respondent.	Case No. 800-2017-036226 OAH No. 2018030775

PROPOSED DECISION

Administrative Law Judge Juliet E. Cox, State of California, Office of Administrative Hearings, heard this matter on August 3, 2018, in Oakland, California.

Deputy Attorney General Alice W. Wong represented complainant Kimberly Kirchmeyer, Executive Director of the Medical Board of California.

Respondent Brian Walker, M.D., was present representing himself.

The matter was submitted for decision on August 3, 2018.

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1. Respondent Brian Walker, M.D., practices medicine in Washington. Before he began practicing in Washington, he applied to the Medical Board of California (Board) in May 2017, using his former name[1] (Gregory Charles Khoury), for a physician's and surgeon's certificate authorizing him to practice medicine in California. The Board notified respondent by letter dated August 14, 2017, that it would deny this application. Respondent requested a hearing.

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2. On November 3, 2017, acting in her official capacity as Executive Director of the Board, complainant Kimberly Kirchmeyer filed the statement of issues in this matter. The statement of issues alleges that respondent should not receive a California physician's and surgeon's certificate because he has been convicted of a crime that relates substantially to the practice of medicine.

Professional Experience

3. Respondent graduated from the University of Texas Medical School at San Antonio in 1980. He undertook a one-year internship, including general medicine training, at the University of Oklahoma Medical Center in Oklahoma City, and then a three-year psychiatry residency at Duke University Hospital in Durham, North Carolina. He received a license to practice medicine in Oklahoma in 1981, and in North Carolina in 1982.

4. After completing his residency in North Carolina, respondent moved to New Orleans and received a license to practice medicine in Louisiana in 1984. Between 1984 and 2007 respondent practiced medicine in New Orleans, first in the Jo Ellen Smith Psychiatric Hospital and later in a private clinic he established to focus on treating patients with serious medical and psychiatric illnesses.

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9. Respondent left Mid-America Christian University in September 2017 to take a position as a physician at the Washington State Penitentiary in Walla Walla, Washington. Respondent enjoys working in prison and believes his own experience of incarceration gives him a perspective on his patients' experience that few other physicians share. He seeks licensure in California because he has family in California, and hopes to take a similar position in the California Department of Corrections and Rehabilitation.

10. Respondent is board-certified as a psychiatrist. He last renewed his certification in 2017.

Criminal Conviction

11. On August 18, 2010, respondent was convicted in the United States District Court for the Eastern District of Louisiana of a felony violation of section 1347 of title 18 of the United States Code (health care billing fraud). The crime occurred between 2004 and early 2006, when respondent's billing staff at his New Orleans clinic billed various public and private health agencies for patient treatment at the clinic over the previous several years. Respondent and his clinic staff had rendered care to the patients, but violated the law by overbilling for that care.

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13. Because of his conviction, respondent is ineligible to provide services for which the federal Medicare or Medicaid programs pay.

License History

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16. Effective August 16, 2013, the Oklahoma State Board of Medical Licensure and Supervision (Oklahoma State Board) reinstated respondent's Oklahoma license, but restricted him to practicing medicine only as an employee of the Oklahoma Department of Corrections.[2] The Oklahoma State Board also imposed other monitoring conditions on respondent's renewed license.

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References

20. Respondent offered many character reference letters from persons who have known him personally and professionally.

a. Joseph P. Balkenbush has known respondent since childhood. Balkenbush has been a trial court judge in Oklahoma, and has served as ethics counsel for the Oklahoma Bar Association. When respondent provided child custody evaluations, as described above in Finding 7, he did so for Balkenbush's family law practice. Balkenbush states that respondent has offered valuable care and counsel to Balkenbush, to Balkenbush's family law clients, and to other mutual friends.

b. Charles D. Crow directs the Master of Ministry program at Mid-America Christian University, and worked there with respondent on course development and implementation. Crow notes that respondent has "broad experience" that gives him "a rich appreciation of cultural diversity and respect for individuals."

c. Jared Folmsbee is a high school teacher who has known respondent for about 10 years. Folmsbee states that respondent has experienced great adversity, but has "paid his debt to society" and has taken the opportunity to become a stronger person.

d. Bob Glaze is the President and General Manager of Southwest Radio Ministries, and has been a pastor and educator for more than 45 years. Respondent treated Glaze's late wife successfully for chronic pain and for panic disorder. Glaze has maintained a friendly relationship with respondent and believes respondent to have a strong character.

e. Joe Glickman, Jr., M.D., has been respondent's friend for more than 40 years. Dr. Glickman helped respondent stay up-to-date on continuing medical education while respondent was in prison.

f. S. Craig Glickman also has known respondent for about 40 years. Respondent has treated Glickman's son, and was "professional, caring and indispensably

helpful." Glickman believes respondent to have been wrongly convicted, but notes that respondent accepted the conviction and sentence "with grace, dignity and humility."

g. Thomas Hannon is Executive Director of COCI, described above in Finding 5. Hannon has high praise for respondent, contrasting respondent very favorably with other clinicians who served COCI's clientele simply by writing prescriptions "for the medication de jour." Respondent took time to listen to his patients who also were COCI clients, and to learn how to reach many of them despite their intellectual disabilities. Hannon understands that respondent committed a crime, but urges the Board to permit respondent to practice medicine in California.

h. Michael Hurdman is a professor at Mid-America Christian University, and worked with respondent there. Hurdman states that respondent showed himself to be a "man of integrity and high standards of practice in every endeavor."

i. Kevin Khoury, M.D., is respondent's younger brother. Dr. Khoury has worked primarily in medical administration rather than in direct patient care, and helped respondent establish mental health service at the Davenport Medical Clinic as described above in Finding 7. Respondent lived with Dr. Khoury for several years after his release from prison, and Dr. Khoury describes how respondent rebuilt his life "with a very different foundation."

j. Steve Marcus knew respondent when respondent worked at the Davenport Medical Clinic, although the evidence did not establish Marcus's role at the clinic. Marcus states that respondent provided significant pro bono mental health service at the clinic, with "positive feedback" from patients.

k. Jennifer Maxfield-DeCarlo is the Program Director of the Adult School of Psychology and Counseling at Mid-America Christian University. She knows respondent from his work in that program and believes that he brought strong clinical skills to the program.

l. John W. Nelson, M.D., collaborated with respondent in caring for patients with psychiatric disorders and chronic pain before respondent's conviction. Dr. Nelson is unfamiliar with the reasons for respondent's conviction, but states that as a clinician respondent provided excellent patient care.

m. Ralph Reyes was the priest who attempted to add a mental health clinic to his parish's church-based medical clinic, as described above in Finding 17. Fr. Reyes looked forward to having respondent provide care in the clinic, and appreciated respondent's willingness to serve.

n. Paula Schick is a physician assistant who has known respondent for several years. She believes he has shown strength, and that he enjoys serving his community through teaching and medical care.

o. Jason S. Smitherman knew respondent first as Smitherman's son's physician, but came later to know him socially through church and community activities. Smitherman has strong praise for respondent's clinical skills, as well as for respondent's rehabilitation and commitment to community service after his release from prison.

p. Frank Stotts has known respondent for only about two years, but took a five-day cross-country road trip with respondent in 2017. Stotts states that respondent has great integrity, and listens well both to friends and to strangers.

21. Respondent also provided brief email correspondence he had received from a former patient, and from several former students, thanking him for his thoughtful and effective care and teaching.

LEGAL CONCLUSIONS

1. The Board may deny an application for a physician's and surgeon's certificate if the applicant has done anything that would have constituted cause for discipline if she or he already held a certificate. (Bus. & Prof. Code, §§ 480, subd. (a)(3)(A), 2221, subd. (a).)

2. Conviction of a crime arising from medical practice is unprofessional conduct for a California physician. (Bus. & Prof. Code, §§ 480, subd. (a)(1), 2234, subds. (a), (e), (f), 2236.) The matters stated in Finding 11 establish cause for the Board to have denied respondent's application for a California physician's and surgeon's certificate.

3. As an alternative to denying respondent's application, the Board may grant the application; revoke the certificate; stay the revocation; and place respondent on probation. (Bus. & Prof. Code, §§ 488, subd. (b), 2221, subd. (a).) The Board's Disciplinary Guidelines (see Cal. Code Regs., tit. 16, § 1361) permit this outcome, with one year's suspension and at least seven years' probation, for a physician who has committed a felony relating to medical billing.

4. The matters stated in Finding 11 establish that more than 10 years have passed since the events that led to respondent's conviction and that eight years have passed since the conviction itself. In that time, as summarized in Findings 7 through 9 and 12, respondent has completed his sentence, completed a period of license restriction in Oklahoma, and practiced medicine in community-service clinics and in a prison. As stated in Finding 13, he remains under a significant billing restriction, which necessarily limits his employment opportunities.

5. Under all these circumstances, and considering as well the matters stated in Findings 19 through 21, a further period of probation or license restriction will not improve public safety if respondent practices medicine in California. A non-probationary physician's and surgeon's certificate should issue to respondent, accompanied by a reprimand recognizing his prior serious misconduct. (See Bus. & Prof. Code, § 2221.05, subd. (a).)

ORDER

1. The application by respondent Brian Walker, M.D., formerly known as Gregory Charles Khoury, M.D., for a physician's and surgeon's certificate is granted.

2. Respondent's certificate is hereby publicly reprimanded for the billing misconduct and criminal conviction described in this decision.

DATED: August 27, 2018

DocuSigned by:
Juliet E. Cox
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JULIET E. COX
Administrative Law Judge
Office of Administrative Hearings