

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

**In the Matter of the Statement of Issues
Against:**

Richard Anthony Liles, M.D.

Applicant.

Case No. 800-2019-051590

DECISION

The attached Proposed Decision is hereby adopted as the Decision and Order of the Medical Board of California, Department of Consumer Affairs, State of California.

This Decision shall become effective at 5:00 p.m. on May 29, 2020.

IT IS SO ORDERED April 29, 2020.

MEDICAL BOARD OF CALIFORNIA



**By: _____
Ronald H. Lewis, M.D., Chair
Panel A**

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

In the Matter of the Statement of Issues Against:

RICHARD ANTHONY LILES, M.D., Applicant.

Case No. 800-2019-051590

OAH No. 2019100816

PROPOSED DECISION

Administrative Law Judge Juliet E. Cox, State of California, Office of Administrative Hearings, heard this matter on February 13, 2020, in Oakland, California.

Supervising Deputy Attorney General Jane Zack Simon represented complainant Christine J. Lally, Interim Executive Director of the Medical Board of California.

Attorney Benjamin J. Fenton represented applicant Richard Anthony Liles, M.D., who was present for the hearing.

Complainant had submitted written argument before the hearing. The record was held open for applicant to submit written argument. The record closed and the matter was submitted for decision on March 5, 2020.

FACTUAL FINDINGS

1. Applicant Richard Anthony Liles, M.D., practices medicine in Florida. In April 2018, he submitted an electronic application to the Medical Board of California (California Board) for a California physician's and surgeon's certificate.

2. As described more fully below in Findings 13 through 20, applicant did not finish supplying all supporting documents for the application described in Finding 1 until late 2018.

3. In January 2019, acting in her official capacity as Executive Director of the California Board, Kimberly Kirchmeyer notified applicant that the California Board would not grant him a "full and unrestricted medical license" in California. Applicant appealed this denial.

4. Again acting in her official capacity, Kirchmeyer filed a statement of issues against applicant on May 30, 2019. The statement of issues alleges that applicant should receive at best a probationary physician's and surgeon's certificate, because his application misstated his professional disciplinary history. After Kirchmeyer filed the statement of issues, complainant Christine J. Lally replaced Kirchmeyer as the California Board's Interim Executive Director.

Educational and Professional History

5. Applicant received his medical degree in 1985. He completed a residency in physical medicine and rehabilitation in 1989, and is board-certified in physical medicine and rehabilitation and in electro diagnostic medicine.

6. Applicant received a license to practice medicine in Texas in 1986, during his residency. He allowed that license to expire without renewal in 1996 because he did not intend to return to medical practice in Texas.

7. After completing his residency, applicant moved to Florida. He received a license to practice medicine in Florida in April 1989, and has practiced physical medicine and rehabilitation in Florida since then.

8. Until June 2018, applicant was the medical director of a rehabilitation hospital. He continues to practice in that hospital and to treat non-hospitalized patients. Applicant also is certified as a life care planner, and provides forensic evaluations and expert testimony regarding the lifetime costs of severe injuries.

Disciplinary History

9. In October 2001, upon applicant's consent, the State of Florida Board of Medicine (Florida Board) entered a disciplinary order against applicant. The order required applicant to pay a \$1,000 fine, and to reimburse the Florida Board \$1,505 for its enforcement costs. In addition, the order required applicant to attend at least three hours of supplementary continuing medical education in risk management. Applicant fulfilled these requirements.

10. The Florida Board entered the order described in Finding 9 because a member of applicant's clinic staff had burned one of applicant's patients while warming the patient's hand for an electro diagnostic study. Although applicant was not personally present when the staff member applied heat to the patient's hand, the Florida Board disciplined him because he had not supervised his staff member prudently.

Application to the California Board

11. Applicant decided to seek a California physician's and surgeon's certificate so that he could travel to California from time to time to fill in for a friend at a Modesto rehabilitation hospital. He enlisted his practice's office manager, Kim Cummings, to help him put the California application together.

12. Cummings established an electronic account with the California Department of Consumer Affairs's BreEZe licensing communications system. Although the account was for applicant, under his name, Cummings used her own email address rather than any address belonging to applicant as the email address for communications about applicant.

13. On April 16, 2018, Cummings electronically submitted an initial application questionnaire for applicant to the California Board, via the BreEZe system.

14. Some of the answers Cummings provided on the electronic questionnaire described in Finding 13 were incorrect. In particular, although Cummings gave a "yes" answer to Question 26, asking whether applicant ever had settled or lost a malpractice action, she gave a "no" answer to Question 36, asking whether applicant ever had experienced professional discipline.

15. Applicant does not recall specifically reviewing the answers Cummings prepared, but he testified credibly that he did not expect or direct her to submit the electronic application described in Finding 13 without his review. He also testified credibly that if he had realized that Cummings had answered "no" to Question 36, he would have directed her to change that answer to "yes."

16. After submitting the electronic application described in Finding 13, Cummings needed to assemble a variety of supporting documents to send to the California Board on applicant's behalf. For reasons the evidence did not explain, Cummings struggled between April and October 2018 to obtain and provide all these supporting documents to the California Board's staff's satisfaction.

17. One of the documents the California Board staff member reviewing applicant's file requested from applicant was an explanation for the "yes" answer to Question 26. In early October 2018, applicant prepared a short handwritten explanation, stating not only that he had settled a malpractice action resulting from the incident described above in Finding 10 but also that the Florida Board had issued a professional disciplinary order to him because of that same incident. He or Cummings also obtained a copy of the Florida Board's order, described above in Finding 9. Applicant testified credibly that he asked Cummings to send both the statement and the Florida Board order to the California Board staff member who had requested the information, and that he believed she had done so.¹

18. After several failed attempts, Cummings finally succeeded on October 30, 2018, in obtaining and providing a notarized declaration and signature from applicant to the California Board confirming that all information in his application was true and complete.

¹ Cummings did send documents both by email and by United States Postal Service to this California Board staff member in response to this request. Because neither Cummings nor the staff member kept reliable and complete records of their correspondence, the evidence did not establish exactly what she sent.

19. On December 5, 2018, a California Board staff member sent a letter to applicant asking him for a "signed and dated personal explanation" for having answered "no" rather than "yes" to application Question 36.

20. After speaking with applicant, Cummings prepared a letter for applicant's signature answering the question described in Finding 19. She wrote, "If question #36 was no [sic] answered it was an oversight." The letter went on to state positively that applicant had never experienced professional discipline, and that "The answer to question #36 is no." Applicant signed this letter, and Cummings sent it by email on December 14, 2018, to the California Board staff member who had requested it.

21. Applicant testified credibly that he had told Cummings to write in the response letter described in Finding 20 that any "no" answer to Question 36 was an "oversight," not that failure to answer this question was an oversight or that he had never experienced professional discipline. He also testified credibly that if he actually had read Cummings's letter before signing it, he would have directed her to revise it. Applicant did not read the letter carefully, however, just as he had not read carefully the application Cummings initially submitted for him in April 2018.

References

22. Applicant provided a reference letter from Dennis M. Lox, M.D., a professional colleague in Florida. Dr. Lox first met applicant during residency and believes him to be "conscientious and an excellent physician." Dr. Lox also does not believe that applicant "would knowingly misstate or try to misrepresent his background."

23. Applicant also provided a reference letter from Craig A. Schwartz, M.D., another professional colleague in Florida. Dr. Schwartz describes applicant as “extremely knowledgeable,” and has “utmost confidence in his clinical skills.”

24. Applicant provided a reference letter from Greg Vigna, M.D., who also testified to support applicant. Dr. Vigna was a member of applicant’s medical practice group in Florida between 1996 and 1999, and knows applicant as a trustworthy and competent physician. He believes applicant to be truthful and reliable in his business and personal relationships. Dr. Vigna is the physician who asked applicant to apply for California licensure, as described in Finding 11.

LEGAL CONCLUSIONS

1. The California Board may deny an application for a physician’s and surgeon’s certificate if the applicant has engaged in deceit or dishonesty reflecting potential unfitness to practice medicine, or if the applicant knowingly has made a false statement in his or her application. (Bus. & Prof. Code, §§ 480, subds. (a)(2), (a)(3), (d), 2221, subd. (a), 2234, subd. (e); Cal. Code Regs., tit. 16, § 1360.)

2. In light of the matters stated in Finding 9, the matters stated in Findings 14 and 20 establish that applicant made at least two false statements in his application to the California Board. Although the matters stated in Findings 15 and 21 show that applicant did not make these false statements knowingly or intentionally, their effect was dishonest, and the statements relate substantially to his prudence in supervising his support staff. These matters all together constitute cause to deny the application.

3. Instead of denying an application, the California Board also may issue a probationary physician's and surgeon's certificate, or may issue a certificate with a public reprimand. (Bus. & Prof. Code, §§ 2221, subd. (a), 2221.05.)

4. In this case, the matters stated in Findings 17 and 21 show applicant's intent to communicate truthfully with the California Board despite his assistant's errors. In addition, the matters stated in Findings 10 and 22 through 24 show overall that applicant's medical practice does not pose a significant risk to the public. These matters do not justify the burden to either the California Board or applicant of a probationary license, but they do justify a reprimand for his inattention to the details of his California Board application, including for his inattention to his staff member's errors in preparing that application.

ORDER

1. The application by Richard Anthony Liles, M.D., for a physician's and surgeon's certificate is granted.

2. Applicant's certificate is hereby publicly reprimanded for the application and supervision errors described in this decision.

DATE: March 27, 2020

DocuSigned by:
Juliet E. Cox
JULIETTE COX

Administrative Law Judge

Office of Administrative Hearings

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MEDICAL BOARD OF CALIFORNIA
SACRAMENTO May 30 20 19
BY K. [Signature] ANALYST

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9 **BEFORE THE**
10 **MEDICAL BOARD OF CALIFORNIA**
11 **DEPARTMENT OF CONSUMER AFFAIRS**
12 **STATE OF CALIFORNIA**

12 In the Matter of the Statement of Issues
13 Against:

Case No. 800-2019-051590

14 **RICHARD ANTHONY LILES**

STATEMENT OF ISSUES

15 Applicant.

16
17 Complainant alleges:

18 PARTIES

19 1. Kimberly Kirchmeyer (Complainant) brings this Statement of Issues solely in her
20 official capacity as the Executive Director of the Medical Board of California, Department of
21 Consumer Affairs (the Board).

22 2. On April 16, 2018, Richard Anthony Liles (Applicant) submitted to the Board an
23 application (the Application) for a Physician's and Surgeon's License. On October 30, 2018,
24 Richard Anthony Liles certified under penalty of perjury to the truthfulness of all information in
25 the Application. The Board denied the application and Applicant requested a hearing.

26 JURISDICTION
27 CAUSE FOR DENIAL OF APPLICATION

28 (Unprofessional Conduct/Dishonesty/False Statement in License Application)

1 3. This Statement of Issues is brought before the Medical Board of California,
2 Department of Consumer Affairs, under the authority of the following laws. All section
3 references are to the Business and Professions Code unless otherwise indicated.

4 4. Section 2221, subdivision (a) of the Code states:

5 “(a) The board may deny a physician’s and surgeon’s certificate to an applicant
6 guilty of unprofessional conduct or of any cause that would subject a licensee to revocation
7 or suspension of his or her license. The board in its sole discretion, may issue a
8 probationary physician’s and surgeon’s certificate to an applicant subject to [various terms
9 and conditions].”

10 5. Section 480, subdivisions (a), (a)(2), (a)(3)(A-B), and (d) of the Code state:

11 “(a) A board may deny a license regulated by this code on the grounds that the
12 applicant has one of the following:

13 ...

14 “(2) Done any act involving dishonesty, fraud, or deceit with the intent to
15 substantially benefit himself or herself or another, or substantially injure another.”

16 “(3)(A) Done any act that if done by a licentiate of the business or profession in
17 question, would be grounds for suspension or revocation of license.

18 (B) The board may deny a license pursuant to this subdivision only if the crime
19 or act is substantially related to the qualifications, functions, or duties of the business or
20 profession for which application is made.”

21 ...

22 “(d) A board may deny a license regulated by this code on the ground that the
23 applicant knowingly made a false statement of fact that is required to be revealed in the
24 application for the license.”

25 6. Section 2234, and subdivision (e) of the Code state:

26 “The board shall take action against any licensee who is charged with
27 unprofessional conduct. In addition to other provisions of this article, unprofessional
28 conduct includes, but is not limited to, the following:

1 ...
2 “(e) The commission of any act involving dishonesty or corruption that is
3 substantially related to the qualifications, functions, or duties of a physician and surgeon.”

4 7. California Code of Regulations, title 16, section 1360, states:

5 “For the purposes of denial, suspension or revocation of a license, certificate or
6 permit pursuant to Division 1.5 (commencing with Section 475) of the code, a crime or act
7 shall be considered to be substantially related to the qualifications, functions or duties of a
8 person holding a license, certificate or permit under the Medical Practice Act if to a
9 substantial degree it evidences present or potential unfitness of a person holding a license,
10 certificate or permit to perform the functions authorized by the license, certificate or permit
11 in a manner consistent with the public health, safety or welfare. Such crimes or acts shall
12 include but not be limited to the following: Violating or attempting to violate, directly or
13 indirectly, or assisting in or abetting the violation of, or conspiring to violate any provision
14 of the Medical Practice Act.”

15 STATEMENT OF FACTS

16 8. Applicant is a licensed physician in Florida. As a practicing physician in Florida,
17 Applicant was involved in an August 1998 incident where a patient was injured. According to the
18 draft administrative complaint, the injury occurred as a result of Applicant directing that a
19 patient’s hand be warmed with a Hydrocollator heating pad. Applicant failed to provide
20 supervision of the Hydrocollator pad on the patient, despite knowing that the patient had a
21 reduced ability to feel sensation. As a result, the patient suffered a burn. The incident resulted in
22 disciplinary action—specifically, a Final Order for a Consent Agreement between Applicant and
23 the Florida Board of Medicine (the Florida Board) regarding the incident (the Final Order).
24 Pursuant to the Final Order, Applicant agreed to pay a \$1,000 fine to the Florida Board, agreed to
25 reimburse the Florida Board for costs, and agreed to further Continuing Medical Education. On
26 August 22, 2001, Applicant signed the Consent Agreement; and on October 23, 2001, the Florida
27 Board issued the Final Order approving and adopting the Consent Agreement. The Final Order
28 was effective upon the October 31, 2001 filing of the Final Order with the Clerk of the

1 Department of Health. The Florida Department of Health's website for License Verification of
2 Richard Anthony Liles says "Yes" for "Discipline on File" and refers to the October 31, 2001
3 Final Order.

4 9. On April 16, 2018, Applicant submitted to the Board an Application for a Physician's
5 and Surgeon's License. On this Application, Question 32 asked whether Applicant had ever had
6 any license to practice medicine subjected to any disciplinary action. In response to this question,
7 Applicant answered No. On this Application, Question 36 asked whether Applicant had ever had
8 any license to practice medicine subjected to any action including, but not limited to, informal or
9 confidential discipline, consent orders, letters of warning, letters of reprimand, or citation. In
10 response to this question, Applicant answered No. On October 30, 2018, Applicant certified
11 under penalty of perjury to the truthfulness of all information in the Application.

12 10. In a letter dated December 5, 2018, the Board advised Applicant that the Board was
13 still evaluating Applicant's request for medical licensure, and asked Applicant to provide a signed
14 and dated personal explanation for why he failed to disclose on his Application in relation to
15 Question 36.

16 11. In a letter dated December 13, 2018 from Applicant to the Board, Applicant
17 explained that:

18 "If question #36 was no [sic] answered it was an oversight. I have never had any license to
19 practice medicine subjected to any action including, but not limited to, informal or
20 confidential discipline, consent orders, letters of warning, letters of reprimand, or citation.
The answer to question #36 is no."

21 Applicant's attorney subsequently represented to the Board that a member of Respondent's staff
22 had initially completed the Application. Applicant's attorney also subsequently represented to the
23 Board that a member of Respondent's staff discussed the Board's request for additional
24 information with Applicant, but Applicant did not review the actual request.

25 CAUSE FOR DENIAL OF APPLICATION

26 (Unprofessional Conduct/Dishonesty/False Statement in License Application)
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28

