BEFORE THE WEST VIRGINIA BOARD OF MEDICINE

WEST VIRGINIA BOARD OF MEDICINE,
        Petitioner,

v.                                              Complaint No: 14-105-W

SANJIT KAUR DHALIWAL, M.D.,
        Respondent.

FINAL ORDER

This proceeding arises pursuant to the West Virginia Medical Practice Act at W. Va. Code § 30-1-1 et seq. It is a disciplinary proceeding involving the status of the license to practice medicine and surgery in the state of West Virginia of Sanjit Kaur Dhaliwal. The West Virginia Board of Medicine (hereinafter “Board”) is the duly authorized state agency to oversee and conduct physician disciplinary hearings pursuant to the provisions of W. Va. Code § 30-3-14.

Pursuant to W. Va. Code R. § 11-3-18.2, and upon review of the record in the above-styled matter, a quorum of the Board at its regularly scheduled meeting on January 11, 2016, considered the Hearing Examiner’s recommendations and, hereby ADOPTS, in its entirety, the Hearing Examiner’s Recommended Findings of Fact and Proposed Decision, dated December 17, 2015, which is attached hereto and incorporated by reference herein.
Final Order
Sanjit Kaur Dhaliwal, M.D.

However, the Board MODIFIES the Recommendation by striking the section entitled “Issue” and MODIFIES the Conclusions of Law at Item numbered twenty-one (21) by correcting the citation to the West Virginia Code by striking “§ 30-3-14©” and in lieu thereof ADOPTS “§ 30-3-14(c)(1)” as the correct citation.

Further, the Board hereby ADOPTS, in their entirety, all the remaining Hearing Examiner’s Recommended Conclusions of Law, dated December 17, 2015, which is attached hereto and incorporated by reference herein.

Based on the Hearing Examiner’s Findings of Fact and Conclusions of Law, the allegations as outlined in the Board’s Statement of Charges are sustained in their entirety. Dr. Dhaliwal violated the Board’s statutes and rules by knowingly making a false statement in connection with her 2014 renewal application for her license to practice medicine and surgery in the state of West Virginia. As such, the Board hereby ORDERS as follows:

1. That the Respondent is hereby issued a Public Reprimand for her false response to Question 12 on her June 2014 licensure renewal application;

2. That the Respondent is hereby assessed a civil fine in the amount of $400, which is equal to the renewal application fee for the 2014 renewal for her West Virginia medical license;

3. That the Respondent shall pay all the costs and expenses associated with these proceedings, including but not limited to, the Hearing Examiner’s costs, court reporter, the expert witness, and outside counsel employed by the West Virginia
Final Order
Sanjit Kaur Dhaliwal, M.D.

Attorney General’s Office, and all other costs of the investigation and prosecution of this matter. Payment shall be made by Dr. Dhaliwal to the Board within thirty dates of issuance of an Invoice by the Board.

WEST VIRGINIA BOARD OF MEDICINE

Ahmed Daver Faheem, M.D.
President

Rahul Gupta, M.D., M.P.H.
Secretary

This Order shall be deemed entered on the date that this Order, with all required signatures affixed hereupon, is received in the Board’s 101 Dee Drive, Charleston, West Virginia office. The Executive Director of the West Virginia Board of Medicine is hereby authorized to denote the date of entry on behalf of the Board in accordance with this paragraph.

ENTERED this ______ day of January, 2016.
BEFORE THE WEST VIRGINIA BOARD OF MEDICINE

WEST VIRGINIA BOARD OF MEDICINE,

Petitioner,

v.

SANJIT KAUR DHALIWAL, M.D.

Respondent.

Complaint No. 14-105-W

RECOMMENDED FINDINGS OF FACT, CONCLUSIONS OF LAW AND PROPOSED DECISION OF THE HEARING EXAMINER

PROCEDURAL HISTORY

This proceeding arises under the West Virginia Medical Practice Act, W. Va. Code §30-3-1 et seq. It is a disciplinary proceeding involving the status of the license to practice of Sanjit Kaur Dhaliwal, M.D.

The public hearing in this matter convened before Hearing Examiner Jack C. McClung, Esquire on Tuesday, September 22, 2015, in the Hearing Room of the West Virginia Board of Medicine, 101 Dee Drive, Charleston, West Virginia. The hearing commenced at 9:35 am and recessed at 12:30 pm.

The West Virginia Board of Medicine (hereinafter “Petitioner” or “Board”), petitioner herein, appeared by its counsel, Jamie S. Alley, Board Attorney, and its Executive Director, Robert C. Knittle, Board Paralegal, Karen Day, was also present throughout the proceedings. Respondent Sanjit Kaur Dhaliwal, M.D., (hereinafter “Respondent “ or “Dr. Dhaliwal”) appeared pro se and was present throughout the proceedings.
Petitioner called, and testimony was received, from two witnesses: Robert C. Knittle; and Board Investigator Leslie A. Inghram, CMBI. Respondent testified on her own behalf.

At the hearing of this matter, the Board offered sixteen exhibits in support of its complaint against Dr. Dhilliwal. Each of the Board’s exhibits were admitted into evidence and made part of the record as Board Exhibits 1-16. Dr. Dhaliwal offered one exhibit, which was admitted into evidence as Respondent Exhibit 1.

The public hearing was transcribed, and the parties were given the opportunity to request a copy of the transcript. W. Va. Code R. §11-3-12.3 (2010). The Hearing Examiner set a briefing schedule, permitting the parties to provide proposed findings of fact and conclusions of law on or before November 20, 2015. This schedule was agreed to by the parties.

Upon a motion by the Board, all exhibits which include personally identifiable information regarding Dr. Dhaliwal have been placed under seal to protect the privacy of her confidential personal information.

All decisions rendered at the public hearing in this case on motions filed or otherwise made by the parties are hereby affirmed, and all motions filed or otherwise made in this case by either of the parties which were not previously ruled upon by the Hearing Examiner are hereby denied and rejected.

After a review of the complete record, any matter of which judicial notice was taken during the proceedings, assessing the credibility of the witnesses, and weighing the evidence in consideration of the same, the following findings of fact and conclusions of law are hereby made.

To the extent that the testimony of any witness is not in accord with these findings and
conclusions, such testimony is not credited. To the extent that these findings of fact and conclusions of law are consistent with any proposed findings of fact and conclusions of law submitted by either of the parties, the same are adopted by the Hearing Examiner. To the extent that these findings of fact and conclusions of law are inconsistent with any proposed findings of fact or conclusions of law submitted by the parties, such proposals are hereby rejected. Any proposed finding of fact, conclusion of law or argument proposed and submitted by a party but omitted herein is deemed irrelevant, or unnecessary to the determination of the material issues in this matter.

FINDINGS OF FACT

1. Petitioner Board is the “regulatory and disciplinary body for the practice of medicine and surgery” in West Virginia, W. Va. Code §30-3-5 and §30-3-7(a). Its mission is to protect the public and to help “maintain standards and quality of care in the practice of medicine throughout the state” through licensing, regulating and, where appropriate, disciplining physicians.

2. Dr. Dhalwal holds a West Virginia medical license, No. 21522, which was first issued in May 2004. Hearing Transcript (“Tr.”) at p. 33; Board Exhibit 3.

3. On November 19, 2007, Dr. Dhalwal entered into a Consent Order with the Board associated with her inaccurate answer on her June 28, 2006, license renewal application. Board’s Exhibit 6; see also Tr. pp. 45-47.

4. On her license renewal application dated June 28, 2006, Dr. Dhalwal attested that she had completed the required continuing medical education credits [“CMEs”] for the July 1, 2004 through June 30, 2006 CME cycle, which included two hours of CME in the subject of
end-of-life care including pain management. Board’s Exhibit 6 at p. 1.

5. In January 2007, Dr. Dhalwal was selected for a random CME audit by the Board to verify her renewal application attestation that she had completed all required CMEs for the reporting cycle of July 1, 2004 through June 30, 2006. Board’s Exhibit 6, p. 1.

6. The audit of Dr. Dhalwal’s CME records revealed that she had not completed the required two hours of CME in the subject of end-of-life care including pain management. Board’s Exhibit 6 at p. 2.

7. The Findings of Fact incorporated into Dr. Dhalwal’s Consent Order indicate that she “had not carefully looked into the specific requirements of the continuing medical education” required. Board’s Exhibit 6 at p. 2.

8. Dr. Dhalwal agreed to accept discipline for unprofessional conduct and for the renewal of a license to practice medicine and surgery by making a false statement in connection with a license application. See Board’s Exhibit 6 at p. 2.

9. The Consent Order required Dr. Dhalwal to complete two (2) hours of CME in the subject of end-of-life care, including pain management on or before December 31, 2007, and pay a civil fine in the amount of $200.00. Board’s Exhibit 6, at p. 4.

10. Dr. Dhalwal successfully complied with the requirements of her November 19, 2007 Consent Order. Board’s Exhibit 6 at p. 7.

11. To date, the November 19, 2007 Consent Order is the only disciplinary action taken with regard to Dr. Dhalwal’s West Virginia medical license. Board Exhibits 4, 5.

12. A primary method by which the Board obtains information about the professional practice of its licensees is through information self-reported by licensees on initial and renewal
applications. Tr. pp. 25, 91.

13. Physician medical licenses issued by the Board are subject to periodic renewal on a fixed, biennial schedule. Tr. p. 20.

14. In order to renew a medical license, a licensee must complete the renewal application, provide all required supporting and/or supplemental documentation, and submit the required renewal fee. Tr. pp. 20-21; see also W. Va. Code R. §11-1A-9.1 (May 1, 2007).

15. The 2014 physician license renewal application included a series of fifteen questions regarding professional practice, character and fitness ["Professional Practice Questions"] which were to be answered in the affirmative or in the negative. Board Exhibit 9.

16. Licensees who renewed during the 2014 renewal cycle, which included Respondent, provided Professional Practice information on their applications which related to the time frame of July 1, 2012 through June 30, 2014. Tr. pp. 22-23.

17. If a 2014 renewal applicant answered any of the Professional Practice Questions in the affirmative, the renewal applicant was required to submit a narrative explanation of the facts and circumstances which resulted in an affirmative answer, copies of documents which relate to or explain the affirmative response, or both. Tr. p. 23.

18. While 2014 renewal applications were accepted electronically through an on-line resource, renewal applicants during the 2014 renewal cycle with any affirmative answers to Professional Practice Questions were required to submit a paper renewal application. Tr. p. 57-58.

19. Licensees who successfully completed the renewal process during the 2014 renewal cycle were issued renewed licenses for the period of July 1, 2014 through June 30, 2016.

21. Dr. Dhanliwal submitted her application electronically by utilizing the Board’s online renewal application. Tr. p. 55.

22. By placing her electronic signature on her online renewal application, Dr. Dhanliwal made the following attestation:

I attest that I have carefully read the questions in this application and have answered them completely. All of my answers and statements made herein are true and correct. I understand that any license renewed on the basis of this application is based upon the truthfulness and completeness of the statements I have made herein. I understand that furnishing false information in connection with this application constitutes good cause for the revocation of my license to practice medicine in West Virginia. I understand and agree that if any of my answers or other information provided in this application changes prior to July 1, 2014, I have a duty to notify the Board and to amend and/or supplement my application immediately.

Tr. p. 58; Board’s Exhibit 9 at p. 5.

23. In her renewal application, Dr. Dhanliwal answered “no” to each of the Professional Practice Questions. Tr. P. 57; Board Exhibit 9.

24. Specifically, Dr. Dhanliwal answered “no” to Professional Practice Question No. 12, which asked whether or not, during the period of July 1, 2012 to June 30, 2014, she “had any judgments or settlements arising from medical professional liability rendered or made against” her. Board Exhibit 9 at p. 5.

25. After the 2014 renewal cycle ended, the Board conducted a review of the renewal applications for the 2014 renewal cycle and cross-referenced licensees’ application responses
with other information reported to the Board to determine if there were any discrepancies with respect to the reported malpractice information. Tr. pp. 48-49.

26. The Board reviewed Dr. Dhaliwal's renewal application responses and determined that Dr. Dhaliwal's negative answer to Professional Practice Question No. 12 was in conflict with other information in the Board's possession regarding her malpractice settlements and judgments during the requisite reporting period. Tr. p. 49-50.

27. On December 6, 2012, Western Litigation Inc. submitted a medical malpractice report to the Board on behalf of Lexington Insurance Company which relates to a medical malpractice settlement made on behalf of Dr. Dhaliwal. Tr. P. 60; Board Exhibit 10.

28. According to the said report by Western Litigation Inc., on or about October 8, 2012, a settlement was reached with respect to a medical malpractice claim filed in the circuit court of Kanawha County, West Virginia (Docket Number 11-C-263), in which Dr. Dhaliwal was a defendant. Tr. Pp. 60- 61; Board Exhibit 10.

29. The said medical malpractice complaint alleged that Dr. Dhaliwal deviated from the standard of care and engaged in the improper administration of pain medications in combination with slow release medications resulting in respiratory depression and hypoxic ischemic encephalopathy. Board Exhibit 10.

30. The said medical malpractice allegations resulting in the October 2012 settlement arose out of Dr. Dhaliwal's practice as an emergency room physician on or about July 23, 2010. Tr. P. 60; Board Exhibit 10.

31. A settlement of the medical malpractice complaint was reached in October 2012, and payment on behalf of Dr. Dhaliwal was made in the amount of thirty five thousand dollars
32. The October 2012 settlement and November 2012 malpractice payment on behalf of Dr. Dhalliwal occurred during the July 1, 2012 through June 30, 2014 reporting time period associated with Professional Practice Question No. 12. Compare Board Exhibit 10 and Board Exhibit 9 at p. 5.

33. The October 2012 settlement on behalf of Dr. Dhalliwal therefore obligated her to answer “yes” to Professional Practice Question No. 12 on her June 2014 renewal application. Compare Board Exhibit 10 and Board Exhibit 9.

34. Dr. Dhalliwal failed to disclose the October 2012 settlement on her June 25, 2014 license renewal application. Board Exhibit 9.

35. On November 2, 2014, the Complaint Committee issued an initiated complaint against Dr. Dhalliwal alleging certain violations of the West Virginia Medical Practice Act related to her false response to Professional Practice Question No. 12 on her 2014 renewal application. Tr. pp. 48-50, 116; Board Exhibit 7.

36. Dr. Dhalliwal appeared before the Complaint Committee for a discussion of the initiated complaint in March 2015. Tr. pp. 51, 116; Board Exhibit 8.

37. The Complaint Committee subsequently found probable cause to institute disciplinary charges, and a Complaint and Notice of Hearing were issued with respect to Dr. Dhalliwal in June 2015. Board Exhibits 1 and 2.

38. After the Complaint was served on her, Dr. Dhalliwal did not file an Answer to the Complaint and Notice of Hearing. Tr. p. 118.

39. Dr. Dhalliwal does not dispute that she had a $35,000 settlement between July 1,
2012 and June 30, 2014, that she was aware of the $35,000 settlement from October 2012 at the
time she completed her June 2014 renewal application, and seeks to characterize her failure to
provide an accurate answer to Professional Practice Question 12 as an unintentional mistake. Tr.
86, 88-89, 97.

40. Dr. Dhaliwal testified that, based upon her prior Consent Order, which related to
providing factually incorrect information on a renewal application, she understood that renewal
applications were serious and that it was important to provide correct answers. Tr. p. 106.

41. Dr. Dhaliwal contends that she looked at the “loss date” entry on her West
Virginia Board of Medicine licensee profile for information when she answered Question 12.
She contends that, based on the information in her licensee profile, she determined the
malpractice did not need to be reported. Tr. p. 109.

42. At the hearing of this matter, Dr. Dhaliwal offered a printout of her licensee web
profile from November 2014 as part of Respondent Exhibit 1 and contended that the November
2014 printout was similar in content to what she observed on the Board’s website in June when
she completed the renewal application. Respondent Exhibit 1.

43. Dr. Dhaliwal contends that her web profile was a reliable source for information
to complete her renewal application, asserts that the Board included incorrect malpractice
information on her licensee profile, but acknowledged that the incorrect information was
“probably because of my mistake.” Tr. pp. 83, 110.

44. At one time, the malpractice information for Dr. Dhaliwal included a $1,000,000
settlement, a $500,000 settlement and the October 2012 $35,000 settlement. The content of the
report was consistent with the information provided by Dr. Dhaliwal and her insurance company.
Ultimately, it was determined that the $500,000 record was actually a report of a partial payment of the $1,000,000 settlement, and her licensee profile was corrected. Compare Board Exhibits 4 and 5 and Respondent Exhibit 1.

45. Dr. Dhaliwal testified that when she reviewed her WVBOOM web profile and noticed the “Loss Date” for the $35,000 settlement was in 2010, she decided the malpractice did not need to be reported, but such explanation fails to account for the fact that immediately below the “Loss Date” is an entry of “October 18, 2012” for the “Action Date,” Tr. p. 109; Respondent Exhibit 1.

46. Dr. Dhaliwal also indicated that the fact that the $35,000 settlement appeared on the Board’s website was an indication that she did not need to report it. Tr. p. 109.

47. The credibility of Dr. Dhaliwal’s assertions as to the Board’s website is undercut in light of the fact that Dr. Dhaliwal also contends there were errors on her licensee profile with respect to the double reporting of one malpractice event, and the fact that the $35,000 settlement had an action date listed that clearly fell within the reporting period for Question 12 on the 2014 renewal application. Respondent Exhibit 1.

48. Dr. Dhaliwal claims she relied on her licensee profile, but did not try to determine what the terms “Loss Date” or “Action Date” meant. Tr. p. 113.

49. However, on her 2010 renewal application, Respondent apparently understood what “loss date” meant in that in her report of professional malpractice submitted with her 2010 renewal application, Dr. Dhaliwal listed a “date of loss” of 2007 on her handwritten form, clearly indicating the date when the alleged malpractice occurred. Exhibit 12, p. 9.

50. Moreover, the action date listed on the web profile in association with the
$35,000 settlement occurred after she renewed in 2012, which would have been an additional indicator to Dr. Dhaliwal that this malpractice has not been reported in the prior cycle. Respondent Exhibit 1.

51. When asked if her Board web profile was the only source she looked at, she admitted “I don’t remember exactly what I was looking at the time.” Tr. p. 110.

52. Respondent does not dispute that her negative response to Professional Practice Question No. 12 was factually false. Tr. pp. 78, 81, 109-110; Board Exhibit 9: see also Respondent's post-hearing submission at p. 1.

53. It is found that it was not reasonable for Dr. Dhaliwal to rely on the subject Board’s web profile in responding to the questions on her renewal application nor did such reliance constitute professional due diligence on the part of Respondent.

54. On her June 2010 renewal application, which required responses to the same Professional Practice Questions, but for the period of July 1, 2008 through June 30, 2010, Dr. Dhaliwal appropriately reported a different malpractice claim which was resolved during the reporting period applicable for her 2010 application. The said appropriate response to Question 12 in 2010 demonstrates Respondent’s understanding of the question and her ability to respond to the question accurately. Board Exhibit 12.

55. That prior application as well as the prior consent decree as to Respondent’s prior failure to comply with reporting requirements on renewal applications infers Respondent’s awareness of the importance of accurate reporting and her actual knowledge of the meaning of the questions on the renewal application.

56. It is therefore found that Respondent did renew her West Virginia medical license
in 2014 by knowingly making a false statement in connection with her renewal application.

57. It is therefore found that Dr. Dhaliwal has engaged in conduct which subjects her West Virginia medical license to disciplinary action pursuant to W. Va. Code §30-3-14(c)(1) and W. Va. Code R. § 11-1A-12.1.a, relating to renewing a medical license through fraudulent misrepresentation and/or knowingly making a false statement in connection with a licensure application.

ISSUE

Whether the Respondent violated the provisions of W. Va. Code §30-3-14(c)(1) and W. Va. Code R. §11-1A-12.1(a) by making a fraudulent misrepresentation and/or knowingly making a false statement in connection with her 2014 renewal application to the Board.

CONCLUSIONS OF LAW

1. The West Virginia Board of Medicine is the “regulatory and disciplinary body for the practice of medicine and surgery” for physicians, podiatrists and physician assistants in West Virginia. W.Va. Code §30-3-5 and §30-3-7(a).

2. Respondent Dr. Dhaliwal is a physician licensed to practice medicine in the State of West Virginia and her license to practice medicine and surgery in this State is subject to regulation and discipline by the West Virginia Board of Medicine. W.Va. Code §30-3-5 and §30-3-7(a).

3. The Board therefore has jurisdiction over the subject matter and over the Respondent. W. Va. Code §30-3-5.

4. The West Virginia Medical Practice Act sets forth conduct which may render an individual unqualified for licensure or subject to discipline or other restrictions upon licensure.
5. The general provisions applicable to state licensing and examination boards, authorize the Board to promulgate legislative rules that "delineate conduct, practices or acts which, in the judgment of the board, constitute professional negligence, a willful departure from accepted standards of professional conduct and/or which may render an individual unqualified or unfit for licensure, registration or other authorization to practice." W.Va. Code §30-1-8(c).

6. The Board's Legislative Rule Series 1A, Licensing and Disciplinary Procedures: Physicians; Podiatrists, enumerates additional conduct for which discipline may be imposed, including conduct which constitutes dishonorable, unethical and/or unprofessional conduct. W. Va. Code R. §11-1A-12 (2007).

7. The Board is authorized to impose one or more of the following disciplinary measures, as appropriate:

   a. Denial of an application for a license or other authorization to practice medicine and surgery or podiatry;
   b. Administer a public reprimand;
   c. Issue a suspension, limitation or other restriction upon a license for a period of up to five years;
   d. Suspend, limit or restrict his or her license or other authorization to practice medicine and surgery or podiatry for up to five years;
   e. Revoke a license or other authorization to practice medicine and surgery or podiatry or to prescribe or dispense controlled substances for up to ten years;
   f. Require a licensee "to submit to care, counseling or treatment designated by the Board as a condition for initial or continued licensure or renewal of licensure or other authorization to practice medicine and surgery or podiatry";
   g. Require participation in a program of education;
   h. Require supervised practice for a specified period of time; and
   i. Assess a fine.

9. Personal service of the Complaint and Notice of Hearing was made in accordance with the requirements of West Virginia Code § 56-2-1. Tr. pp. 14 and 117; Board’s Exhibits 1 and 2.

10. The Respondent had legally sufficient notice of the public hearing. West Virginia Code §30-3-14(h).

11. The Board bears the burden of proving the allegations of professional misconduct by clear and convincing evidence. Webb v. West Virginia Board of Medicine, 212 W.Va. 149, 157, 569 S.E.2d 225, 233 (2002).

12. The West Virginia Supreme Court of Appeals defines clear and convincing proof as that measure or degree of proof which produces in the mind of the trier of fact a firm belief or conviction as to the allegations sought to be established. Webb v. West Virginia Board of Medicine, 212 W.Va. at 156, 569 at 232, citing Wheeling Dollar Savings & Trust Co. v. Singer, 162 W. Va. 502, 510, 250 S.E.2d 369, 374 (1978) (quoting Cross v. Ledford, 161 Ohio St. 469, 477, 120 N.E.2d 118, 123 (1954).

13. The Board has a mandate to ensure “a professional environment that encourages the delivery of quality medical services” to protect the public interest. W.Va. Code §30-3-2.

14. Protection of the public interest requires that the Board demand a high degree of integrity from members of the medical profession. Vest v. Cobb, 138 W.Va. 660, 76 S.E.2d 885 (1953); West Virginia Board of Medicine v. Romulo Dela Rosa, M.D., (1989); West Virginia

15. In an administrative proceeding, credibility determinations by the trier of fact are “binding unless patently without basis in the record.” The trier of fact is uniquely situated to make such determinations. See, Webb v. West Virginia Board of Medicine, 569 S.E.2d 225, 232 (W. Va. 2002); In re Queen, 473 S.E.2d 483, 490 (footnote 6) (W. Va. 1996).

16. In proceedings before the West Virginia Board of Medicine, the Hearing Examiner determines credibility based upon a thorough evaluation of witness testimony. Credibility determinations may be based upon many factors, including the following: the general demeanor and comportment of the witness at the hearing; the bias interest of the witness; the consistency or inconsistency of the statements of the witness; the witness’ ability and acuteness to observe; the memory of the witness; the reputation for honesty of the witness; and other factors which tend to cause the trier of fact to believe or disbelieve the testimony of the witness.

See Franklin D. Cleckley, Handbook on Evidence for West Virginia Lawyers, §607.02(1)(b) (5th Ed. 2012); see also West Virginia Board of Medicine v. Danine Ann Rydland, M.D., (2013). The testimony of Mr. Knittle and Investigator Inghram was very credible. The testimony of Dr. Dhaliwal regarding her answer to Question 12 on the 2014 renewal application lacked credibility, and specific credibility determinations regarding certain aspects of Dr. Dhaliwal’s testimony are incorporated in the Proposed Findings of Fact.

17. Petitioner has established by clear and convincing evidence that Respondent made a fraudulent misrepresentation and/or knowingly made a false statement in connection with her 2014 renewal application in violation of W. Va. Code §30-3-14(c)(1) and W. Va. Code R. §11-1A-12.1.a., all as alleged in the Complaint in this matter.
18. It is concluded that Petitioner Board has met its burden of proving the substantive allegations of professional misconduct set forth in the Complaint and Notice of Hearing by clear and convincing evidence. *Webb v. West Virginia Board of Medicine*, 212 W. Va. 149, 569 S.E. 2d 225, 231 (W. Va. 2002).

19. Based upon Dr. Dhaliwal's said violation of the professional conduct standards set forth in W. Va. Code § 30-3-14(c)(1) and W. Va. Code R. §11-1A-12.1.a, Dr. Dhaliwal is unqualified to practice medicine and surgery in the State of West Virginia without some measure of discipline being imposed upon her license.

20. It is therefore concluded that Petitioner Board has produced clear and convincing evidence to support the allegations of unprofessional conduct by Respondent stated in the November 2, 2014, Complaint filed in this matter, that the said Complaint ought therefore be sustained in all respects, and that any objection or defense thereto by Respondent Dr. Dhaliwal ought to be denied and rejected.

21. The Board may enter an Order imposing disciplinary sanctions when, subsequent to notice and hearing, it is found that the physician has violated West Virginia Code § 30-3-14© and/or the rules promulgated pursuant to the Medical Practice Act.

22. Previous disciplinary case orders as filed with the office of the Secretary of State of West Virginia, pursuant to West Virginia Code §29A-2-9, are Board precedent.

23. “Prior discipline is an aggravating factor in a pending disciplinary proceeding because it calls into question the fitness of the attorney to continue to practice a profession imbued with a public trust.” Syl. pt. 5, *Committee on Legal Ethics v. Tatterson*, 177 W. Va. 356, 352 S.E.2d 107 (1986).
24. A physician's prior disciplinary sanctions are relevant, probative and admissible in professional discipline proceedings, particularly for the purpose of determining appropriate disciplinary sanctions.

25. In the context of these proceedings, Dr. Dhaliwal's prior disciplinary history, which also related to providing factually false information in connection with a renewal application, is found to be relevant to the determination of appropriate disciplinary sanctions.

**PROPOSED DECISION**

Consistent with the Board's mandate to protect the public and to preserve the public health, it is appropriate and in the interests of public health, safety and welfare that the allegations as stated in the November 2, 2014, Complaint filed in this matter be SUSTAINED in all respects, that any objection or defense thereto by Respondent Dr. Dhaliwal ought to be denied and rejected, and:

1. that Dr. Dhaliwal be issued a Public Reprimand for her false response to Question 12 on her June 2014 licensure renewal application;

2. that Dr. Dhaliwal be assessed a Civil Fine in the amount of $400, which is equal to the renewal application fee for the 2014 renewal of her West Virginia medical license;

3. that Dr. Dhaliwal is hereby ORDERED to pay the costs and expenses of these proceedings, including, but not limited to, costs associated with the services provided by the Hearing Examiner, the court reporter, and all other costs of investigation, service of process and the prosecution of this matter; and,
4. that Dr. Dhaliwal be directed to make payment of the aforesaid Civil Fine, costs and expenses to the Board within thirty (30) days of the issuance of an Invoice by the Board.

Dated this __________ day of December, 2015.

Jack C. McClung
Hearing Examiner