

Before the
Administrative Hearing Commission
State of Missouri



BRETT SNODGRASS, M.D.)	
)	
Petitioner,)	
)	
vs.)	No. 13-2075 HA
)	
STATE BOARD OF REGISTRATION)	
FOR THE HEALING ARTS,)	
)	
Respondent.)	

DECISION

We deny the application of Brett Snodgrass, M.D., for a license to practice medicine in the State of Missouri.

Procedure

On December 4, 2013, Snodgrass filed a complaint against the State Board of Registration for the Healing Arts (“the Board”), challenging the Board’s decision to deny him a license to practice medicine in the State of Missouri. Snodgrass filed an amended complaint on January 21, 2014, and the Board filed an answer on February 7, 2014. We scheduled the hearing for May 19-20, 2014.

The Board filed a motion for continuance on April 16, 2014. We granted the motion and rescheduled the hearing for June 30 – July 1, 2014.

On June 26, 2014, the Board filed a motion for leave to amend its answer and for a continuance. We granted the Board's motion to amend its answer, but denied the motion for continuance. Instead, we issued an order bifurcating the hearing in order to hear evidence on the causes for denial contained in the Board's original answer, as scheduled, on June 30 – July 1, 2014, and to hear evidence from both parties on the additional allegations contained in the Board's amended answer on August 5, 2014.

We held the hearing on June 30 and July 1, 2014. Sara Rittman represented Snodgrass; Frank B. Meyers and Sarah Schappe represented the Board. On July 14, 2014, the Board, with Snodgrass' consent, dismissed certain paragraphs of its amended answer alleging that Snodgrass had engaged in the practice of medicine without a license. It also filed a motion to cancel the August 5, 2014 hearing, and on July 21, 2014, Snodgrass joined in that motion. We canceled the additional day of hearing scheduled for August 5, 2014 and issued a briefing schedule.

At the hearing, the parties submitted deposition designations. By agreement of the parties, we allowed them to file objections to each other's deposition designations and responses to those objections after the hearing. On August 4, 2014, we issued an order ruling on those objections.

The case became ready for our decision on September 8, 2014, the date the last brief was due; however, on September 22, 2014, the Board filed a motion, unopposed by Snodgrass, for leave to file its reply brief out of time. In its motion, the Board stated that it had timely faxed its reply brief but that the fax had failed to transmit to this Commission. We granted the Board's motion and accepted its reply brief as filed on September 22, 2014.

Findings of Fact

1. Snodgrass attended the six-year combined undergraduate and medical school program at the University of Missouri – Kansas City (UMKC). He successfully completed both degrees, earning his M.D. on May 31, 2007.

2. In 2002, Snodgrass was elected by his peers as the recipient of the Richard T. Garcia Award, which recognized his compassion and empathy, leadership skills, and academic excellence.

3. While in medical school, Snodgrass was named to the Alpha Omega Alpha Honor Society, a peer-nominated medical honor society that recognizes academic achievement and professionalism.

4. Snodgrass has passed each of the three steps of the United States Medical Licensing Examination (USMLE). He has also passed the Board’s Jurisprudence Examination.

5. In Snodgrass’ last year of medical school, he applied for residency programs, but he failed to “match” with a program. He was eventually accepted as a first-year preliminary resident in the general surgery residency program at the Carolinas Medical Center in Charlotte, North Carolina (“the Carolinas”).

6. Snodgrass began the surgery residency at the Carolinas on July 1, 2007. Concerns soon arose regarding his ability to interact with patients and care for them. These concerns were expressed by patients, nurses, residents, and attending physicians.

7. In November 2007, the Carolinas program director informed Snodgrass that he would not be accepted into the five-year general surgery residency program. He recommended that Snodgrass explore a residency program in a specialty with limited patient contact.

8. Snodgrass completed, and was given credit for, a year of the preliminary surgery residency at the Carolinas. The program director wrote a letter confirming this, but noted that “he was better suited for a non-clinical specialty.” *Resp. Ex. 1j*.

9. Snodgrass was accepted into UMKC’s four-year pathology residency program at Truman Medical Center (“TMC”) in Kansas City, Missouri, beginning on July 1, 2008.

10. For the first two years of Snodgrass’ residency at UMKC, the director of the pathology residency program was Russell Fiorella. Snodgrass successfully completed the first year of his pathology residency.

11. In February 2010, however, midway through his second year, Snodgrass made a serious mistake that deeply disturbed him and undermined his confidence. He mistakenly discarded two cassettes containing tissue samples in a cancer case. Fiorella initially called this a “sentinel event,” meaning one in which a patient was clinically impaired because of Snodgrass’ mistake.¹ *Resp. Ex. 2c*.

12. On February 17, 2010, Fiorella wrote a memo to Snodgrass regarding this event. He also observed that Snodgrass had spent the night in the pathology department, contrary to his instructions that residents not stay after 6:00 p.m., and that the anatomic pathology attending physicians thought Snodgrass was becoming “somewhat impaired” in his duties. *Id.*

13. Snodgrass spoke to Fiorella about these incidents. Snodgrass believed that fatigue and lack of sleep had contributed to his mistakes, and that he needed to make sleep a higher priority. Fiorella agreed with him, and Snodgrass interpreted this to mean that getting enough sleep was a higher priority than being on time to morning conferences.

¹ Snodgrass testified that the incident was subsequently determined not to be a sentinel event. Tr. 219.

14. In June 2010, a resident complained that Snodgrass made threatening remarks to junior residents in an e-mail in which he noted that if they did not do certain things, they risked “being fired.” *Resp. Ex. 2h.*

15. On July 1, 2010, Kamini Lankachandra became the interim director of the pathology residency program.²

16. Complaints about Snodgrass accumulated during the summer of 2010. On August 23, 2010, Catherine Buck, Lankachandra’s assistant, wrote a memo to the file on Lankachandra’s behalf in which she noted such complaints, including a superior attitude toward colleagues, tardiness or absence from mandatory morning conferences, argumentativeness with attending physicians, failure to timely answer his pager, and infrequent attendance at his research rotation in August 2010. Buck noted in the memo that when Snodgrass was responsible for morning conference, he had the residents read materials aloud rather than making a presentation to them in addition to their studies, as customary. She summed up Lankachandra’s concerns by noting:

Dr. Snodgrass at this moment in his pathology residency program could be characterized as demanding and erratic. His academic performance remains undiminished, but his professional demeanor is negligible. His recent physical appearance, including notable weight loss, has caused alarm in some quarters. Something is amiss . . . We believe that Dr. Snodgrass is a “resident in distress” and our concern for his well-being is of paramount importance to all of us.

Resp. Ex. 2c.

17. Lankachandra met with Snodgrass on August 26, 2010, and counseled him about expectations of him in the residency program.

18. On September 15, 2010, Snodgrass noticed that another resident, Ahmad Mansour, had not logged off his computer, which he knew was a violation of institutional policy. He sent

² Lankachandra subsequently became the permanent program director.

an e-mail to residents from Mansour's account that read: "You residents need to log-off the computers. Especially Brett Snodgrass, he is a misfit." *Resp. Ex. 2e.*

19. Snodgrass' action in accessing Mansour's account was also a policy violation. He received a written warning about the incident. Lankachandra later found out Snodgrass had sent a similarly inappropriate e-mail from another resident's account in February 2010.

20. On September 17, 2010, Snodgrass mistakenly identified "blasts"³ in a blood sample. The patient underwent a bone marrow biopsy. When the chief resident reviewed the slide afterward, he realized that the suspicious cells were not blasts, but plasma cells. *Resp. Ex. 2f.*

21. On September 20, 2010, Snodgrass received a page during morning conference and said he needed to go the "gross room" to receive a specimen. He did not return to conference. Lankachandra went to the gross room after conference to check on Snodgrass, who was talking with a technician. She considered his failure to explain what happened or to return to conference to be disrespectful and exemplary of his failure to communicate properly.

22. Also in September 2010, TMC transcriptionists complained about Snodgrass' dictation because he dictated too fast, or with a fake Indian accent. They found it annoying and difficult to understand.

23. On September 24, 2010, Buck and Lankachandra met with Dr. Jill Moormeier, the associate dean for graduate medical education ("GME") at UMKC. Moormeier is also the designated institutional officer for UMKC – the person who is responsible for the proper administration of its residency programs.

24. Moormeier, Buck, and Lankachandra decided that the four attending physicians who comprised the Department of Pathology Education Committee ("the Education Committee")

³ No definition of "blast" appears in the record. We infer that it is a type of abnormal cell.

should review the issues relating to Snodgrass and discuss them with him in a meeting on October 5, 2010. In her memo to file, Buck noted:

The letter we send to UMKC SOM [school of medicine] GME must follow the disciplinary action policy. The letter we send to Dr. Snodgrass must contain our “course of action” for him & we must give it to him right away. He gets to make an appeal & get an independent decision on his professionalism.

Ex. 2g.

25. The UMKC School of Medicine’s disciplinary policy sets out procedures for responding to residents’ academic and behavioral problems. In the case of a resident’s failure to meet academic expectations, the policy specifies:

C. Performance Feedback . . . If it is deemed that the deficiency is serious enough to warrant additional action, the Education Committee may decide to issue a formal Letter of Academic Deficiency. This letter should include the following: a specific description of the deficiency including examples, a remediation plan with expected timeline for remediation, performance goals with appropriate methods to assess accomplishment, and consequences or either meeting or not meeting the expected goals. . . .

It is expected that in addition to the written warning, the resident or fellow will receive initial and ongoing mentoring by faculty, to give the resident every opportunity to remediate his or her deficiency. Progress through the remediation plan will be monitored by the Education Committee. . . .

D. Failure to Remediate. If a resident or fellow fails to successfully achieve the goals set in the Letter of Academic Deficiency, the Education Committee may consider additional action. At this time, the Education Committee may recommend another Letter of Academic Deficiency, or may recommend a more serious disciplinary action including probation, extension of training, election not to promote, non-renewal of contract or dismissal. With each of these actions, the resident or fellow should receive a letter outlining the proposed action and including all of the elements required in a Letter of Academic Deficiency (except for instances of proposed dismissal, where the remediation plan and performance goals are not relevant). The letter must also notify the resident or fellow of their right to request review of the decision and the processes and timeline of the review request.

E. Request for Review. The resident or fellow has the right to request review of any disciplinary action that has the potential to adversely affect the course of his or her training or career (including probation, extension of training, election not to promote, non-renewal of contract or dismissal).

Reportable Actions. Reportable actions are those actions that the training program or GME administration must disclose to others upon request, including future employers, privileging hospitals, and licensing or specialty boards. A final disciplinary action that results in extension of training, election not to promote, non-renewal of contract, or dismissal is considered a reportable action.

Pet. Ex. E, at 1-3.

26. The Education Committee met alone, and then with Snodgrass. It voted to place Snodgrass on a remediation plan.

27. The Committee provided Snodgrass with a written remediation plan, and informed him by letter that he would be terminated from the pathology program at the end of the calendar year if he did not comply with the “directives in this remediation process.” *Ex. 2g.* The Committee also referred Snodgrass to the Wellness Committee for a substance abuse evaluation.

28. The Wellness Committee subsequently determined that Snodgrass did not have a substance abuse problem.

29. Snodgrass met with Lankachandra and Buck to discuss his progress several times between October 5, 2010, the date he was placed on remediation, and the end of the calendar year.

30. Snodgrass made efforts to meet the goals of his remediation plan. He tried to be more polite with staff and attending physicians, improved his conference participation, and ceased to have problems with the transcriptionists.

31. On December 20, 2010, Snodgrass’ psychiatrist, Miguel Stamati, M.D., sent a letter to the chairman of the Wellness Committee at TMC. He reported his opinion that Snodgrass did not suffer from alcohol or drug abuse or dependence, but that he had attention deficit hyperactivity disorder and generalized anxiety disorder and took medication for these conditions. He further opined that Snodgrass did not have narcissistic personality disorder as suggested by

his supervisors, but that he did have deficits in empathy and in the ability to read or interpret interpersonal cues. In his opinion, Snodgrass' "character style" was better explained by a diagnosis of Asperger's syndrome or high functioning autism.

32. On December 29, 2010, the education committee met again with Snodgrass, and then met without him, to discuss the outcome of his remediation plan. They decided he had not improved, but that because of Stamati's letter, they had to keep him in the program. According to Buck's memo to the file on the same date:

The unanimous vote was NOT to terminate him, but to continue with his probationary status for another 6 months because he has NOT recovered to anyone's satisfaction & to seek assistance from UMKC SOM GME with this resident.

Resp. Ex. 2j.

33. By letter dated December 29, 2010, Lankachandra notified Snodgrass that he would "remain on probation" from January through June 2011, "due to the fact that you have not recovered to anyone's satisfaction." *Id.* She cited Snodgrass' "consistent, substandard behavior, including chronic tardiness, conference absenteeism, disheveled and unkempt personal appearance, inattention to detail, further destruction of property and utter inability to follow instructions" as the basis for the Education Committee's decision. *Id.*

34. Snodgrass disagreed with the Education Committee's decision and wrote a detailed response to Moormeier.

35. Lankachandra continued to have concerns about Snodgrass' performance during the winter of 2011. Then, on April 17, 2011, she was informed that Snodgrass failed his elective renal pathology rotation at Children's Mercy Hospital. The attending physician wrote to her expressing his "deepest concerns," reporting that Snodgrass missed meetings and conferences, and demonstrated poor preparation and knowledge in the subject area. He wrote:

I've been working with Dr. Snodgrass during the three years of his residency performing autopsies at CMH. While Dr. Snodgrass demonstrated excellent performance during his first year of residency he is not showing progression, and even regressing in his performance as I've seen in his recent renal pathology rotation.

Resp. Ex. 2n.

36. The Education Committee met again and decided not to renew Snodgrass' contract for the upcoming academic year. On April 18, 2011, Lankachandra informed him of this decision in a letter in which she stated that he had not met the expectations communicated to him on October 5, 2010 and December 29, 2010, although on both occasions he had been "placed on probation." *Resp. Ex. 2o.* In her letter, Lankachandra specifically listed the following reasons for the Education Committee's decision not to renew his contract:

- Refusal/failure to follow instructions, listen to directions and learn from attendings
- Unexcused absences/tardiness, specifically not being where you are supposed to be when you are supposed to be there
- Fractured trust within the program and the department because you deliberately and willingly and consistently say one thing and do another
- Inability to study and work on a daily basis for the entire day
- Lack of rapport with colleagues, attending supervisors
- Negative energy has not been turned into positive force
- Continually blames others for incidents
- Failed rotation in renal pathology in March 2011

Id.

37. Snodgrass filed an appeal, but first he questioned why he had not been able to request a review of the Education Committee's previous decisions. He cited the provision in the "Failure to Remediate" paragraph from the UMKC GME disciplinary policy that a letter of academic deficiency "must also notify the resident or fellow of their right to request review of the decision and the processes and timeline of the review request." *Resp. Ex. 2p.*

38. Moormeier replied:

From my review of your record, I do not see that you were formally put on probation, either in October or in December –

rather remediation was planned (in general, this is good for you because state licensing boards investigate histories of probation, but not remediation – which is considered a lesser offense). There is no opportunity to appeal a remediation plan.

Id.

39. The Appeals Committee met and denied Snodgrass' appeal.

40. Snodgrass filed a complaint with the Accreditation Council on Graduate Medical Education (ACGME) alleging that, among other issues, he was not informed of UMKC's policies for filing a grievance or appeal, and was not provided due process when he was placed on probation. Moormeier replied to the ACGME that Snodgrass was placed on a remediation plan, an action not reviewable under UMKC's disciplinary action policy, rather than probation.

Resp. Ex. 6.

41. When Snodgrass left UMKC in June 2011, he had completed 47 months of residency: 12 at the Carolinas, and 35 at UMKC.

42. Following his departure from UMKC, Snodgrass sent several e-mails to UMKC staff asking for clarification on a point in Lankachandra's December 29, 2010 letter to him. "I sent multiple e-mails asking what I was to recover from and, you know, what do you mean I haven't recovered regarding those issues, and they never replied to me." Tr. 258.

43. Snodgrass applied for new residency programs through the residency match program. From the summer of 2011 through the following winter he had several interviews.

44. Around February 2012, Snodgrass created a Facebook page in Lankachandra's name, but every post bore the designation, "third party narrator." On the page, he posted numerous messages that negatively depicted Lankachandra and her actions. For example, on February 17, he posted:

I was going to let Resident B go to another University. After all, if he isn't good enough for the most corrupt residency program in the

country, he is certainly good enough for another residency program. However, resident B exhibits a total lack of respect for my own unprofessional conduct. Resident B actually thinks it is inappropriate for impaired residents to provide patient care. However, I teach my residents that it is good for impaired residents to provide patient care.

On February 19, he posted:

I Doctor Kamani Lanakchandra [sic] MD. Think:

- 1.It is okay for me to send drunk residents to the frozen section room.
- 2.I dont [sic] need to intervene to help the drunk residents.
- 3.I should permit the resident to remain drunk for months.
- 4.I deserve to have a medical license.
- 5.I deserve to be respected as a doctor.

Resp. Ex. 13 (pages unnumbered).

45. Snodgrass did not match with a residency program in 2012. In April 2012, following his failure to match, Snodgrass despaired and became irrational. He began to barrage Lankachandra with e-mails and other communications, “with the aim that she would respond to me in some way.” Tr. 260.

46. Snodgrass caused Lankachandra to receive thousands of e-mails from various sources, including the CDC, FDA, NIH, and usa.gov. Using her name, he subscribed to magazines and made multiple applications for mortgage loans and medical and life insurance. He contacted drug rehabilitation facilities in her name, indicating that she was seeking treatment for drug addiction.

47. TMC was forced to change Lankachandra’s e-mail address several times.

48. Snodgrass also made harassing telephone calls to Buck.

49. Lankachandra contacted a lawyer and filed a police report about Snodgrass’ harassing activities. When Snodgrass received the letter from her lawyer, he ceased those activities. He also subsequently pled guilty in municipal court to disturbing the peace and

received two years' probation, scheduled to end in August 2014. He was prohibited from having any contact with Lankachandra.

50. Snodgrass continued to look for residency programs and apply for jobs and fellowships. In late July 2012, he began a clinical research fellowship in dermatology at the University of California-Davis (UC-Davis).

51. While Snodgrass was working at his fellowship at UC-Davis, he continued to apply for residency programs. When he did so, he was required to send certificates of completion for his prior residency training. Those certificates are supplied by the residency program itself rather than the hospital or school of medicine, but because Snodgrass was prohibited from contacting Lankachandra, he made his requests to Moormeier, who in turn conveyed them to Lankachandra.

52. On September 7, 2012, Lankachandra wrote an "attachment to certification of completion of ACGME/RCPSC Postgraduate Training" stating: "Dr. Snodgrass was placed on probation while he was a PGY-3 and his contract was not renewed for PGY-4 for the academic year 2011." *Pet. Ex. I*.

53. In fact, as Moormeier had previously communicated to him, Snodgrass was never placed on probation at UMKC.

54. Snodgrass applied for, and was accepted into, a urology internship program in Boston, Massachusetts. He also applied for a medical license from Georgia.

55. In April 2013, Snodgrass received an e-mail from an application specialist with the Georgia Composite Medical Board informing him that the Board had voted to have Snodgrass appear for an interview with the Physician Licensure Committee regarding his "probation at UMKC-Pathology Residency from 7/2008 to 6/2011." *Pet. Ex. R (pages unnumbered)*.

56. Snodgrass could not afford to fly to Georgia for the interview. He withdrew his application for licensure in Georgia.

57. Because Snodgrass did not obtain a medical license, he was not eligible to enter the dermatology residency program at UC-Davis. When Snodgrass reported the status of his Georgia application to the Boston internship program in April 2013, his acceptance into that program was withdrawn.

58. In May 2013, Snodgrass again became irrational due to his poor job and residency prospects. He anonymously posted two advertisements on Craigslist.org. The ads depicted an individual with a mask and what appears to be a bomb strapped to his chest. The captions are, “Looking for consultant, labor person (Meet at second floor)” and “Rice(in) inside a can, for sale (FUCK UMKC).” One of the ads also contained the message, “I am looking for someone to help me prepare a special lecture at UMKC-School of Medicine. Please contact me if you can help prepare this academically challenging lecture about . . . a surprise topic and medicine.” *Resp. Ex. 10a.*

59. Following the Craigslist posting, TMC and UMKC SOM increased their security measures. FBI agents interviewed Snodgrass and told him the posting could be viewed as a bomb threat, but no criminal charges were filed against Snodgrass in connection with the postings.

60. On May 23, 2013, Snodgrass filed a complaint against Moormeier with the Board, alleging she had engaged in fraud and professional misconduct. He believed she had told him he was never on probation, but had communicated the opposite to medical boards and residency programs to which he had submitted applications.

61. The Board investigated the complaint again Moormeier and subsequently closed it.

62. Snodgrass' dermatology fellowship ended in June 2013. He returned to his parents' home in St. Louis. He applied for a license to practice medicine in Missouri, and was hired by Great Mines Health Center (Great Mines), in Potosi, Missouri, a medically underserved area. Great Mines is a Federal Qualified Health Center that provides primary, dental, mental health, and prenatal care. A majority of its patients are low income.

63. The Board denied Snodgrass' license application on November 20, 2013.

64. Since then, Snodgrass has worked two days a week at Great Mines as a volunteer, shadowing physicians and a nurse practitioner. The physicians and nurse practitioner at Great Mines have not had problems interacting with Snodgrass. His behavior there has been appropriate, and the physicians have been impressed with his knowledge base and research ability. If Snodgrass obtains a license to practice medicine in Missouri, Great Mines intends to hire him, and he intends to work there as a family practitioner.

65. Snodgrass also began working as a clinical management consultant with a social network for doctors and patients, drsocial.org, through which he provides "an evidence-based review of the medical literature" applicable to a patient. Tr. 283.

66. In March 2014, Snodgrass began using multiple Twitter accounts to send tweets to the Twitter accounts of various organizations and individuals, including the Missouri State Medical Association, the American Medical Association, Governor Jay Nixon, Senator Roy Blunt, Senator Claire McCaskill, and Dr. Jeffrey D. Carter, a member of the Board.

67. Examples of Snodgrass' tweets include the following:

Dear @jeffreycarter, if you have no idea who I blamed, why did you write it occurred repeatedly? This is but one of many similar examples.

@jeffreycarter @FTC please stop regurgitating lies, so I can move on w/ my life. If continue abusing discretion I may pursue legal recourse.

@jeffreydcarter @FTC Absolute immunity permits boards to write false inferences, such as I blamed some-1.
How is writing lies helping Pts?

Resp. Ex. 16 (pages unnumbered; comments in first three pages of exhibit).

68. Snodgrass sent the tweets in an effort to evoke a response from the Board, in the hope of inducing it to settle this case. He tweeted from a particular Web site that allowed others to retweet his message. As a result, Carter received hundreds of tweets similar to the above examples.

69. When Snodgrass was told that Carter found his tweets threatening, he stopped tweeting them.

Conclusions of Law

We have jurisdiction to hear Snodgrass' complaint. Sections 334.330.1, 621.045 and § 621.120, RSMo 2000.⁴ Snodgrass has the burden to prove that he is entitled to a license. Section 621.120. The degree of proof required in a licensing case is generally a preponderance of the evidence, or "that degree of evidence that is of greater weight or more convincing than the evidence which is offered in opposition to it; that is, evidence which as a whole shows the fact to be proved to be more probable than not." See *Kerwin v. Missouri Dental Bd.*, 375 S.W.3d 219, 230 (Mo.App. W.D., 2012), quoting *State Bd. of Nursing v. Berry*, 32 S.W.3d 638, 642 (Mo.App. W.D., 2000); *Schumer v. Lee*, 404 S.W.3d 443, 448 (Mo. App. W.D., 2013).

In determining whether to grant a license, we exercise the same authority that has been granted to the Board. Therefore, we simply decide the application *de novo*. *State Bd. of Regis'n for the Healing Arts v. Trueblood*, 324 S.W.3d 259, 264-67 (Mo. App. W.D., 2012). This Commission must assess the credibility of witnesses, and we are free to believe all, part, or none

⁴Statutory references are to RSMo Supp. 2013 unless otherwise noted.

of the testimony of any witness. *Dorman v. State Bd. of Registration for the Healing Arts*, 62 S.W.3d 446, 455 (Mo.App. W.D., 2001).

Cause to Deny Snodgrass' License Application

When an applicant for licensure files a complaint, the agency's answer provides notice of the issues. *Ballew v. Ainsworth*, 670 S.W.2d 94, 103 (Mo. App. E.D., 1984). In its amended answer, the Board alleges that Snodgrass should be denied a license because he lacks good moral character, an essential qualification for a medical license under § 334.031.1, which states that "Candidates for licenses as physicians and surgeons shall furnish satisfactory evidence of their good moral character[.]" The Board also cites 20 CSR 2150-2.010(1), which requires an applicant for licensure to "[f]urnish satisfactory evidence as to their innocence of unprofessional or dishonorable conduct and good moral character, including postgraduate reference letters from the applicant's training programs."

The Board also alleges there is cause to deny licensure to Snodgrass under §§ 334.100.1 and .2, which state in pertinent part:

1. The board may refuse to issue or renew any certificate of registration or authority, permit or license required pursuant to this chapter for one or any combination of causes stated in subsection 2 of this section. . . .
2. The board may cause a complaint to be filed with the administrative hearing commission as provided by chapter 621 against any holder of any certificate of registration or authority, permit or license required by this chapter or any person who has failed to renew or has surrendered the person's certificate of registration or authority, permit or license for any one or any combination of the following causes:

* * *

- (4) Misconduct, fraud, misrepresentation, dishonesty, unethical conduct or unprofessional conduct in the performance of the functions or duties of any profession licensed or regulated by this chapter, including, but not limited to, the following . . .

(5) Any conduct or practice which is or might be harmful or dangerous to the mental or physical health of a patient or the public[.]

A finding of cause for denial under § 334.100.2 does not mandate denial; it makes the decision as to whether to issue a license discretionary. That discretion belongs to the Board initially; when an applicant files an appeal of such a decision with this Commission, the discretion becomes ours. *Trueblood*, 368 S.W.3d at 267. In this decision, we discuss the discretionary causes for denial first.

Discretionary Causes for Denial

Section 334.100.2(4) – Professional Standards

In its amended answer, the Board alleges there is cause to deny a license to Snodgrass under § 334.100.2(4). In its written argument, the Board argues that it has cause to deny Snodgrass' application for licensure under this section because he has engaged in misconduct, misrepresentation, dishonesty, and unethical and unprofessional conduct. The Board cites the incidents in which Snodgrass mistakenly discarded the specimen cassettes, spent the night in the Pathology Department against the rules, was late to or absent from conferences, told Lankachandra he had to leave a conference to attend to a specimen in the gross room when he allegedly did not, failed to carry his pager, argued with his attending physicians, used the e-mail accounts of other residents without their permission, harassed Lankachandra, and posted the bomb threat on Craig's list. Before we turn to this analysis, however, we must address two threshold issues.

We note that several of these incidents – particularly the less serious incidents that occurred while Snodgrass was a resident at UMKC, such as spending the night in the Pathology Department – were not specifically cited in the Board's amended answer. They are generally included in the conduct cited in UMKC's letter notifying him of the non-renewal of his contract,

however, and the substance of that letter is cited in the amended answer. Moreover, Snodgrass made no objection at the hearing to evidence presented by the Board on these incidents. We conclude that Snodgrass had adequate notice that the Board would present evidence of such conduct at the hearing.

We must also determine whether the conduct at issue was committed “in the performance of the functions or duties of a profession” licensed under Chapter 334, in this case, that of a physician. Chapter 334 does not define the “functions or duties” of a physician, or even “the practice of medicine.” The latter term has been construed by the courts to include the diagnosis and treatment of the sick. *Missouri Bd. of Regis’n for the Healing Arts v. Levine*, 808 S.W.2d 440, 442 (Mo. App. 1991). Certainly some functions that are ancillary to “the diagnosis and treatment of the sick,” such as those referred to in the subparagraphs of § 334.100.2(4) (for example, cooperating with a Board investigation) may be functions or duties of the profession. But others may not be.

We determine that most of the conduct alleged by the Board to be cause for discipline under § 334.100.2(4) is fairly connected to the performance of the functions or duties of a physician in a residency program, but three important episodes that the Board alleges to be unprofessional and unethical conduct are not. When Snodgrass harassed Lankachandra and other members of the UMKC medical school staff in 2012 and 2013, he was not performing any of the functions or duties of a physician. Nor was he performing any such duties when he posted the threatening advertisement on Craig’s list, or when he repeatedly tweeted Carter. While these were serious incidents, they do not fall within the parameters § 334.100.2(4). Therefore, we do not consider this conduct as cause for denial under that subsection. With these observations, we turn to the Board’s arguments.

“Misconduct” is the willful commission of a wrongful act. *Grace v. Missouri Gaming Comm’n*, 51 S.W.3d 891, 900 (Mo. App. W.D. 2001). The Board argues that Snodgrass engaged in misconduct when he discarded the specimen cassettes, spent the night in the Pathology Department counter to Department instructions, was repeatedly late to or absent from conferences, and used the e-mail accounts of two other residents without their permission. Snodgrass discarded the specimen cassettes as a result of a mistake; he did not do so intentionally. He disobeyed the rules of his residency program by spending the night in the Pathology Department, skipping morning conferences, and sending out e-mails from other residents’ computers. Although he did not have a bad intent when he did these things, they were intentional acts committed while he was a resident physician in which he transgressed the rules of the pathology residency program. We conclude they were misconduct within the intendment of § 334.100.2(4).

“Misrepresentation is generally defined as a falsehood or untruth made with the intent of deceit rather than inadvertent mistake.” *Kerwin*, 375 S.W.3d at 229 -230 (quoting *Hernandez v. State Bd. of Registration for the Healing Arts*, 936 S.W.2d 894, 899 n.3 (Mo.App. W.D.1997)). The Board argues that Snodgrass engaged in misrepresentation by lying to Lankachandra about a specimen in the gross room in order to leave conference early. Snodgrass denies he lied about this, and we have made no finding that he did. The Board also points to the e-mail incidents as instances of misrepresentation. Although Snodgrass should not have used another resident’s computer, we disagree that his sending out an e-mail under the other resident’s name was an intentional misrepresentation; after all, he made an unflattering reference to himself in the e-mail sent from Mansour’s account. Rather, we consider these incidents to be more in the nature of artless pranks to make a point. We do not find that Snodgrass engaged in misconduct.

“Dishonesty” is not defined by Chapter 334 or the case law, so we consult the dictionary as to its meaning. *See E&B Granite, Inc. v. Dir. of Revenue*, 331 S.W.3d 314, 318 (Mo. banc 2011) (Absent a statutory definition, the plain meaning of words used in a statute, as found in the dictionary, is typically relied on); *State ex rel. Evans v. Brown Builders Elec. Co., Inc.*, 254 S.W.3d 31, 35 (Mo. banc 2008) (When interpreting regulations, we use the same rules of construction as when interpreting statutes). “Dishonesty” is a “lack of honesty, probity, or integrity in principle : lack of fairness and straightforwardness : disposition to defraud, deceive or betray : FAITHLESSNESS.” WEBSTER’S THIRD NEW INTERNATIONAL DICTIONARY 650 (unabr. 1986). The Board argues that Snodgrass acted dishonestly by missing conferences, lying to leave conference early, spending the night in the Department in violation of policy, and with respect to the e-mail incidents. For the reasons discussed above, we do not find cause to discipline for dishonesty for the incident where he left conference early, or the e-mail incidents. We also do not find he acted dishonestly simply by missing conferences or spending the night in the Pathology Department.

“Unprofessional conduct” eludes a precise definition. Chapter 334 does not define the term, and this Commission and the courts of this state have struggled to impose standards in applying the phrase. The Board cites the definition of unprofessional conduct found in *Perez v. State Bd. of Regis'n for the Healing Arts*, 803 S.W.2d 160, 164 (Mo. App., W.D. 1991): “any conduct which by common opinion and fair judgment is determined to be unprofessional or dishonorable.” But in *Albanna v. State Bd. of Regis'n for the Healing Arts*, 293 S.W.3d 423, 431 (Mo. banc 2009), the Missouri Supreme Court criticized the *Perez* definition of unprofessional conduct, calling it “circular,” and stated:

This Court interprets “unprofessional conduct” in this case to refer, first, to the specifications of the matters “including, but not limited to” those 17 grounds specified in as subparagraphs (a)-(q) of section 334.100.2(4) . . .

[T]his Court recognizes that significant notice issues would arise if grounds not based in statutory language, (whether in subparagraphs (a)-(q) or somewhere else in the statute), were attempted to be used to provide a basis for a finding of unprofessional conduct.

Snodgrass argues, therefore, that we cannot find unprofessional conduct to be a basis for denying him a license.

Snodgrass' argument is buttressed by a later case, *Merwin v. State Bd. of Regis'n for the Healing Arts*, 399 S.W.3d 110 (Mo. App., W.D., 2013). In *Merwin*, the court reversed our decision that a physician who failed to disclose his history of alcohol abuse to a hospital in its hiring and credentialing process had acted unprofessionally. Citing *Albanna*, the court noted that it found no statutory requirement that an applicant disclose the information at issue under the circumstances. *Id.* at 117.

Countervailing these considerations, we note that the Board, in its answer, put Snodgrass on notice of the aspects of his conduct that it considered to be unprofessional, so the "significant notice issues" that concerned the *Albanna* court are not relevant here. And, at the hearing, Snodgrass himself admitted that some of his conduct was unprofessional: using Mansour's e-mail account without his permission, harassing Lankachandra in 2012 and 2013, and posting the Craig's list advertisement in 2013. As a matter of law, we do not find the last two incidents to be cause to deny him a license under § 334.100.2(4) because they were not acts committed within the functions or duties of a physician. But Snodgrass' admission at the hearing that using another resident's e-mail account without his permission was unprofessional conduct undercuts his post-hearing argument that he had insufficient notice to defend the allegation. We find cause to deny him a license for unprofessional conduct in connection with the e-mail incident.

In each case in which the Board alleged conduct to be unprofessional, it also alleged that it was unethical. In some professions that have codified rules of ethics such as attorneys and real

estate appraisers, “unethical conduct” is more readily defined. We know of no such authority in the medical profession, however, and the term is defined neither in Chapter 334 nor in case law. The Board simply conflates the term with “unprofessional conduct” by referring to both in tandem throughout its answer and its written argument. This conflation is surely inappropriate, as statutes should not be interpreted in a way that renders some phrases mere surplusage. *Farish v. Missouri Dep’t of Corrections*, 416 S.W.3d 793, 794 (Mo. banc 2013). Snodgrass defines “ethics” as “a set of moral principles.” *Petitioner’s Proposed Findings of Fact and Conclusions of Law at 19*. He argues that we cannot find unprofessional conduct as a basis for denying his license, but also admits that his conduct has not always been consistent with moral principles.

“Ethical” means “being in accord with approved standards of behavior or a socially or professionally accepted code: MORAL . . . conforming to professionally endorsed principles and practices[.]” WEBSTER’s at 780. We are, again, mindful of the fact that any unethical conduct would have to be in the performance of the functions or duties of a physician. We have been provided no evidence that would assist us in determining that Snodgrass’ conduct as a resident was unethical as defined above. On the basis of this record, we simply cannot make such a finding.

We find cause to deny Snodgrass’ application for licensure under § 334.100.2(4) for misconduct and unprofessional conduct, but not for misrepresentation, dishonesty, or unethical conduct.

Section 334.100.2(5) – Harmful or Potentially
Harmful Conduct or Practice

As cause for denial under this subsection, the Board points to Snodgrass’ destruction of the specimen cassettes in 2010. We have already noted that this was an accident, and it took place when Snodgrass was a second-year pathology resident and still learning his profession. Even Lankachandra and Moormeier – witnesses for the Board – testified that residents make

mistakes and are still learning. Tr. 60, 110. Under those circumstances, we do not find that such an isolated incident rises to the level of conduct that is or might be unreasonably harmful or dangerous to the mental or physical health of a patient or the public.

More generally, the Board argues that Snodgrass' "overall behavior is a constant threat to the mental or physical health of any patients he may treat and to the public." *Pet. Proposed Findings of Fact, Conclusions of Law and Suggestions in Support at 28*. As evidence, it cites Moormeier's testimony and the records from Snodgrass' year at the Carolinas indicating concern about his clinical skills and demeanor, including one that he inspired fear rather than confidence in nurses and patients.

Moormeier testified that Snodgrass' behavior would have an impact on patient care:

When his behavior becomes the center of attention rather than the care of the patients, the risk of causing an error in patient care increases, and whether actually there is an error or not is not as relevant as the fact that it's not a safe environment to ensure that good quality --- high quality safe patient care occurs.

Tr. 145. This evidence is so general and diffuse that we simply cannot find that it supports cause for denial under § 334.100.2(5). As to Snodgrass' conduct during his year at Carolinas, we note that it occurred in 2007-08. It is inappropriate to deny him a license today based on conduct that may have stemmed from youth, immaturity, and a lack of training when he was a first-year resident in his early twenties, making mistakes, which, as Moormeier and Lankachandra testified, residents do.

We find no cause for denial under § 334.100.2(5).

Good Moral Character – Section 334.031 and 20 CSR 2150-2.010(1)

If the only grounds for denying Snodgrass a license were the ones discussed above, we would exercise our discretion and grant him a license. But the Board also contends that Snodgrass lacks good moral character, a necessary qualification for licensure as a physician.

Snodgrass bears the burden to prove he has good moral character. *Francois v. State Bd. of Regis'n for the Healing Arts*, 880 S.W.2d 601, 603 (Mo. App. E.D., 1994). Good moral character is honesty, fairness, and respect for the law and the rights of others. *Hernandez v. State Bd. of Regis'n for Healing Arts*, 936 S.W.2d 894, 899 n.1 (Mo. App., W.D. 1997). With this guidance in mind, we consider the parties' arguments as to whether Snodgrass presented sufficient evidence of good moral character.

The Board contends that virtually all of Snodgrass' actions at UMKC and afterward prove his lack of good moral character, including his spending the night in the Pathology Department in contravention of department rules, mistakenly destroying specimen cassettes, arguing with attending physicians, having other residents read passages from a book out loud during conference, and filing complaints with ACGME and the Board. It argues that all of these actions show lack of fairness or lack respect for the rights of others – including the “right” of the program director to have his directives obeyed.

The above incidents are indicative of other traits, such as carelessness or an extreme lack of self-awareness, but not of lack of good moral character. Snodgrass' destruction of the specimen cassettes was obviously unintentional. When he disobeyed instructions and spent the night in the Pathology Department, he was doing extra reading in the library because he “wanted to be a great resident . . . to go above and beyond the usual requirements” to understand each case thoroughly. Tr. 221. When Snodgrass was told that his questions and challenges were perceived as inappropriately argumentative, he tried to correct his behavior and become more polite. Finally, the Board has supplied no proof that Snodgrass' intent in filing complaints with ACGME and the Board was to harass rather than to express legitimate concerns about what he perceived to be unfairness and misrepresentations in the administration of UMKC's residency program.

Other episodes are more indicative of a lack of good moral character, as even Snodgrass admits. Regardless of Snodgrass' frustrations, he displayed marked lack of respect for the rights of others, including Lankachandra, Buck, and Carter. Posting anything that could be construed as a bomb threat, regardless of whether he intended it to be so, showed an extreme lack of consideration and respect for the entire UMKC Medical School community, including the patients treated at TMC. Accessing other residents' e-mail accounts to send e-mails under their names is also disrespectful, although Snodgrass meant little harm by those last incidents.

Snodgrass admits there is evidence he lacks good moral character. He argues, however, that he has been rehabilitated.

Rehabilitation

A person's good moral character may be rehabilitated. *State Bd. of Regis'n for the Healing Arts v. Finch*, 514 S.W.2d 608, 616 (Mo. App., K.C.D. 1974); *State Bd. of Regis'n for the Healing Arts v. De Vore*, 517 S.W.2d 480, 486 (Mo. App., K.C.D. 1974). In determining whether a person has been rehabilitated, we consider a number of factors, including: the nature and seriousness of the original conduct, the relationship of the offenses to the profession for which licensure is sought, the date of the conduct, the conduct of the applicant since then, the applicant's reputation in the community, and any other evidence relating to the extent to which the applicant has repented and been rehabilitated. *De Vore*, 517 S.W.2d at 484). Therefore, we determine the question of Snodgrass' moral character at the time of this hearing, not as it might have been in the past.

Snodgrass argues that he was treated unfairly by UMKC and Dr. Lankachandra. In particular, he believes their inaccurately reporting to other residency programs and the Georgia Medical Board that he was placed on probation during his residency blocked his chances for licensure and further training. When he failed to match with residency programs in both 2012

and 2013, he sank into despair and acted irrationally. Since then, however, he argues that he has learned to deal with his frustrations appropriately. He points to the fact that when the Board denied his application, he took appropriate action by filing a complaint with this Commission. He acknowledges that some of his previous conduct was unethical and inappropriate. He is also doing his best to stay active within the profession without a license, through his activities with dr.social.com and his volunteer work at Great Mines. His behavior at Great Mines has been appropriate, and if he is licensed he intends to become a provider of medical services in an impoverished and underserved area.

We agree that Snodgrass had some valid reasons to be frustrated with the UMKC pathology residency program. Lankachandra's references to his being placed on probation while in the program were sloppy, inaccurate, and potentially harmful to him. That in no way excuses Snodgrass' extreme and disrespectful behavior in response, the magnitude and intentionality of which dwarf any errors Lankachandra made. We consider that his conduct was serious, although we note that the most serious conduct indicating his lack of good moral character was not directly related to the practice of medicine.

And while we agree that Snodgrass seems to have made some progress within the last year in handling his frustration appropriately, his inappropriate activities are still very recent. In 2012 he harassed Lankachandra to the point that she, understandably, took legal action against him. In 2013 he posted advertisements that most reasonable people would consider to be a bomb threat against the UMKC School of Medicine. In 2014, he barraged a member of the Board with offensive and repetitive tweets, even while his case against the Board was proceeding. He does not admit that this last conduct was inappropriate or disrespectful, instead arguing that it stemmed from his desire to serve patients in severe need of medical care and that he was only exercising his First Amendment rights to express his opinion.

While some of the officials or entities may have preferred that they not received [sic] all of the Tweets, such is the reality of the social media world we live in. In addition, if they were sufficiently bothered, they could have taken steps to block many of the senders. Although there were multiple senders, blocking a relatively small number of senders would have drastically reduced the number of Tweets received.

Petitioner's Reply Brief at 5-6.

The Board has not argued that Snodgrass has no right to express his opinion. But Snodgrass' tweets were offensive, repetitive, and overly frequent, to the point that they alarmed and offended Carter – a reaction that many reasonable people would have. Arguing that Carter could have blocked the tweets completely misses the point. The tweets, and Snodgrass' failure to acknowledge that people have a right not to be harassed, are evidence that Snodgrass has not made sufficient progress in developing respect for the rights of others; hence, he lacks good moral character.

We determine that Snodgrass has not carried his burden to show that he presently has good moral character, a qualification for licensure. Therefore, we lack the discretion to grant him a license. In so deciding, we do not imply that Snodgrass is devoid of internal principles or a moral code. He seems to be genuinely motivated by a strong desire to practice medicine and help patients, both of which are praiseworthy. But his actions – even his recent actions – demonstrate an extreme lack of respect for the rights of other people.

In making this decision, we observe that moral character is by no means immutable. Snodgrass may demonstrate that he possesses it in the future. Applicants who have committed far more serious misconduct have, with the passage of time, demonstrated their rehabilitation and good moral character. Dr. Finch murdered his wife. 514 S.W.2d at 610. Dr. De Vore sold morphine unlawfully and defrauded the public by selling misbranded drugs. 517 S.W.2d at 482.

Dr. Trueblood was addicted to opiates and wrote fraudulent prescriptions for herself. 368 S.W.3d at 260. All were subsequently licensed after demonstrating their rehabilitation. There is no reason that Snodgrass cannot travel a similar path.

Summary

We deny Snodgrass' application for a license to practice medicine in Missouri.

SO ORDERED on October 29, 2014.

\s\ Karen A. Winn

KAREN A. WINN

Commissioner