

COMMONWEALTH OF MASSACHUSETTS

Middlesex, SS.

Board of Registration in Medicine

Adjudicatory Case No. 2023-011

In the Matter of

MICHAEL V. ELMAN, M.D.

CONSENT ORDER

Pursuant to G.L. c. 30A, § 10, Michael V. Elman, M.D. (Respondent) and the Board of Registration in Medicine (Board) (hereinafter referred to jointly as the "Parties") agree that the Board may issue this Consent Order to resolve the above-captioned adjudicatory proceeding. The Parties further agree that this Consent Order will have all the force and effect of a Final Decision within the meaning of 801 CMR 1.01(11)(d). The Respondent admits to the findings of fact specified below and agrees that the Board may make the conclusions of law and impose the sanction set forth below in resolution of investigative Docket No. 19-551.

Findings of Fact

1. The Respondent graduated from Boston University School of Medicine in 2002. He is certified by the American Board of Orthopedic Surgery and specializes in sports medicine. The Respondent has practiced medicine in Massachusetts under certificate number 235367 since 2008. He is affiliated with Norwood Hospital, Carney Hospital and Morton Hospital. Until 2019, he was associated with Good Samaritan Medical Center (GSMC).

2. In January 2017, the Respondent performed a right thumb interpositional arthroplasty with ligamentous reconstruction on Patient J in which he erroneously removed the

scaphoid bone instead of the trapezium bone. Prior to the surgery, the Respondent failed to perform localization of the correct bone performed by intra-operative fluoroscopy

3. In 2021, the Respondent's malpractice insurance carrier made a payment on his behalf of \$750,000 to Patient J in relation to the 2017 surgery.

4. The Board has previously held that wrong-site surgery constitutes malpractice within the meaning of G.L. c. 112, § 61.

5. While working at Norwood Hospital the Respondent engaged in the following disruptive behaviors:

- a. In December 2017, he vented his frustration regarding staffing shortages on a nurse.
 - b. On a separate date in December 2017, he made an off-color joke regarding his coworker's daughter having a sexually transmitted disease in front of multiple colleagues participating in a surgery with him;
 - c. In May 2018, the Respondent failed to respond to a page regarding a pain medication issue for over 90 minutes.
 - d. In June 2018, in violation of hospital policy, the Respondent instructed his surgical team to begin operating on a patient before ordering a pre-operative antibiotic.
 - e. In September 2018, he yelled at nursing staff, calling them "inefficient"
6. In March 2018, Norwood Hospital reprimanded the Respondent.
7. In July 2018, GSMC did not renew the Respondent's privileges.
8. In 2019, the Respondent entered a Behavioral Health contract with Physician Health Services (PSH).

9. In January 2021, the Respondent completed his two-year contract with PHS.

10. Board Policy Number 01-01, Disruptive Physician Behavior (Adopted June 13, 2001) states "Disruptive behavior by a physician has a deleterious effect on the health care system and increases the risk of patient harm." Disruptive behavior is defined as style of interaction with physicians, hospital personnel, patients, family members or others that interferes with patient care and it includes foul language, rude or offensive comments and intimidation of staff, patients, and family members.

Conclusions of Law

- A. The Respondent has engaged in conduct that undermines the public confidence in the integrity of the medical profession. See Levy v. Board of Registration in Medicine, 378 Mass. 519 (1979); Raymond v. Board of Registration in Medicine, 387 Mass. 708 (1982).
- B. The Respondent has violated G.L. c. 112, § 5, eighth par. (h) and 243 CMR 1.03(5)(a)11 by violating a rule or regulation of the Board. Specifically, the Respondent engaged in disruptive behavior contrary to Board Policy 01-01 Disruptive Physician Behavior (Adopted June 13, 2001).
- C. The Respondent violated c. 112, §5 eighth par. (h) and 243 CMR 1.03(5)(a)17 by committing malpractice within the meaning of G.L. c. 112, § 61.

Sanction and Order

The Respondent's license is hereby REPRIMANDED and FINED \$2,500. The fine is due within 90 (ninety) days of ratification of this Consent Order. This sanction is imposed for the violations of law listed in the Conclusion section.

Execution of this Consent Order

Complaint Counsel and the Respondent agree that the approval of this Consent Order is left to the discretion of the Board. The signature of Complaint Counsel, the Respondent, and the Respondent's counsels are expressly conditioned on the Board accepting this Consent Order. If the Board rejects this Consent Order in whole or in part, then the entire document shall be null and void; thereafter, neither of the parties nor anyone else may rely on these stipulations in this proceeding.


As to any matter in this Consent Order left to the discretion of the Board, neither the Respondent, nor anyone acting on his behalf, has received any promises or representations regarding the same.

The Respondent waives any right of appeal that he may have resulting from the Board's acceptance of this Consent Order.

The Respondent shall provide a complete copy of this Consent Order with all exhibits and attachments within ten (10) days by certified mail, return receipt requested, or by hand delivery to the following designated entities: any in- or out-of-state hospital, nursing home, clinic, other licensed facility, or municipal, state, or federal facility at which the Respondent practices medicine; any in- or out-of-state health maintenance organization with whom the Respondent has privileges or any other kind of association; any state agency, in- or out-of-state, with which the Respondent has a provider contract; any in- or out-of-state medical employer, whether or not the Respondent practices medicine there; the state licensing boards of all states in which the Respondent has any kind of license to practice medicine; the Drug Enforcement Administration Boston Diversion Group; and the Massachusetts Department of Public Health Drug Control Program. The Respondent shall also provide this notification to any such

designated entities with which the Respondent becomes associated in the year following the date of imposition of this reprimand. The Respondent is further directed to certify to the Board within ten (10) days that the Respondent has complied with this directive.


The Board expressly reserves the authority to independently notify, at any time, any of the entities designated above, or any other affected entity, of any action it has taken.



Michael V. Elman, M.D.
Licensee

2/1/23


Date



Matthew Connors
Attorney for the Licensee

2/1/23

Date



Tracy Morong
Complaint Counsel

2/1/23

Date

So ORDERED by the Board of Registration in Medicine this 2nd day of March,
2022. 2023.



Julian N. Robinson, M.D.
Board Chair