

COMMONWEALTH OF MASSACHUSETTS
BOARD OF REGISTRATION IN MEDICINE

MIDDLESEX, ss

Adjudicatory Case No. 2019-039
(RM-190-0351)

)
In the Matter of)
)

Harold Altvater, M.D.)
_____))

FINAL DECISION AND ORDER

Procedural History

The Board initiated this proceeding by issuing a Statement of Allegations (SOA) against Respondent on July 17, 2019 and referred the matter to the Division of Administrative Law Appeals (DALA).¹ On July 13, 2020, the Parties filed a joint pre-hearing memorandum with DALA in which they stipulated facts. The undisputed facts included, but were not limited, to the following:

- the Respondent was charged and criminally convicted of three counts of securities fraud;²
- the charges did not involve the Respondent's medical practice or his medical license; and
- the Respondent was sentenced to eighteen months in prison followed by one year of supervised probation. (On June 25, 2020, the Respondent was released from custody.)

¹ On that same day, the Board summarily suspended the Respondent's license, based on a determination that he posed a serious threat to the public health, safety, and welfare and referred the matter to DALA for a hearing on the summary suspension. On October 15, 2019, DALA issued a Ruling determining that the Board did not prove, by a preponderance of the evidence, its charge that the Respondent posed a serious threat. On May 8, 2020, the Board adopted the DALA Ruling and vacated the Respondent's Summary Suspension.

² According to the indictment, between October 2013 and January 2014, the Respondent illegally traded shares of stock in a pharmaceutical company, based on non-public information that his wife, an executive in the company, learned during the course of her employment and shared with him.

On July 29, 2020, DALA held a hearing as to the merits of the SOA.³ On February 17, 2022, the DALA Magistrate issued a Recommended Decision in which she found that the Board proved, by a preponderance of the evidence, that the Respondent had been charged and convicted of a crime and had engaged in conduct that undermines the integrity of the medical profession. The Magistrate found that the Board did not prove that the Respondent had engaged in conduct that demonstrates a lack of good moral character.

On March 14, 2022, Complaint Counsel filed Objections to the Recommended Decision. On June 24, 2022, the Parties filed Memoranda on Disposition. The Board has reviewed the Recommended Decision, the Objections, and the Memoranda on Disposition. On the basis of its review, the Board hereby adopts the Recommended Decision, which is attached hereto and incorporated by reference, with amendments as follows:

The Board rejects the DALA Magistrate's finding that the Board did not prove that Respondent lacks good moral character. The Board is cognizant that when it disregards or rejects the Magistrate's findings, it must explain its reasons for doing so. See *Vinal v. Contributory Ret. Appeal Bd.*, 13 Mass. App. Ct. 85, 100, 430 N.E.2d 440, 449 (1982). Specifically, the Board finds that the Magistrate erred when concluding that she "cannot equate his conviction for insider trading with lack of good moral character." Characterizing the crime as a "serious mistake," the Magistrate failed to take into account that the Respondent's convictions are for crimes that are felonies⁴. Commission of a felony is conclusive evidence of lack of good moral character at the time of the offense. *In the Matter of Harvey Prager*, 422 Mass. 86, 91-91 (1996). In particular, securities fraud convictions are the type of conduct that has been found to reflect adversely on honesty, trustworthiness, or fitness, to constitute dishonesty, fraud deceit and misrepresentation as well as conduct that adversely reflects on fitness to practice. See *In Re: Douglas A. Parigian*, 2015 WL 13687918, at *3 (Ma.St.Bar.Disp.Bd. 2015, Order of Judge Cypher) (securities fraud convictions warranted attorney discipline despite the fact

³ The Board charged the Respondent with: i) having been criminally convicted, a basis for discipline pursuant to G.L. c. 112, § 5 and 243 CMR 1.03(5)(a)(7); ii) having engaged in conduct that undermines the integrity of the medical profession, a basis for discipline pursuant to *Levy v. Board of Registration in Medicine*, 378 Mass. 519 (1979) and *Raymond v. Board of Registration in Medicine*, 387 Mass. 708 (1982). and iii) having engaged in conduct that demonstrates a lack of good moral character.

⁴ The specific charges for securities fraud against the Respondent were brought under 15 U.S.C. §§ 78j(b) and 78ff(a). Convictions for these charges carry a maximum sentence of twenty years, and thus constitute a Class C felony pursuant to 18 U.S.C. § 3559.

that the fraud did not occur while attorney was engaged in the practice of law). Insider trading has been found to constitute an act of moral turpitude, even when the specific circumstances resulted in a misdemeanor conviction. *Chadwick v. State Bar*, 49 Cal. 3d 103, 776 P.2d 240 (1989) cited in *Parigian, supra*, at footnote 13. Moreover, the Board's adoption of the Magistrate's finding without alteration would send a terrible message that some types of felony convictions, e.g., financially motivated white collar crimes, are acceptable "mistakes" that do not reflect on a physician's character. Accordingly, the Board rejects the Magistrate's finding and substitutes in its place the conclusion of law that Respondent's criminal convictions demonstrate a lack of good moral character. This finding is consistent with Board precedent, including *In the Matter of Douglas A. Conigliaro, M.D.*, Board of Registration in Medicine, Adjudicatory Case No. 2017-019 (Final Decision and Order, February 28, 2019), where the Board concluded that a physician who pled guilty to one count of structured bank withdrawals under \$10,000 to thwart bank reporting requirements had demonstrated a lack of good moral character.

Sanction

It is well-established that the Board has the authority to discipline a physician who has been convicted of a crime. See 243 CMR 1.03(5)(a)7. "When determining the appropriate sanction...the Board takes into consideration the nature of the offense, whether the conduct...was related to the practice of medicine...and any mitigating or aggravating factors." See *In the Matter of Ronald S. Grusd, M.D.*, Board of Registration in Medicine, Adjudicatory Case No. 2018-032 (Final Decision and Order, October 22, 2020).⁵

In cases where a physician's criminal conduct involves financial crimes unrelated to the practice of medicine, the Board has imposed a sanction that includes the indefinite suspension of the physician's license, with a stay of the suspension allowed upon the physician's entry into a probation agreement requiring documented completion of community service hours. See e.g., *In the Matter of Daniel Luczkow, M.D.*, Board of

⁵ The Board revoked the physician's inchoate right to renew his license. The physician had been convicted of healthcare fraud charges that resulted in a major impact to the California healthcare system and was sentenced to nine years in prison.

Registration in Medicine, Adjudicatory Case No. 2011-0027 (Consent Order, August 17, 2011)(Board imposed indefinite suspension stayed upon entry into a Probation Agreement requiring completion of 100 hours of community service, where physician was convicted for filing a false income tax return); *In the Matter of Mark Hughes, M.D.*, Board of Registration in Medicine, Adjudicatory Case No. 2012-001 (Consent Order, January 4, 2012)(Board imposed indefinite suspension stayed upon entry into a Probation Agreement requiring completion of community service, following physician's conviction for tax evasion and obstruction of a criminal investigation); and *In the Matter of Torrey A. Toltin, M.D.*, Board of Registration in Medicine, Adjudicatory Case No. 2012—021(Consent Order, July 11, 2012)(Board imposed indefinite suspension with a stay upon entry into a Probation Agreement, requiring completion of 100 hours of community service and physician's compliance with terms of federal probation, following physician's conviction for tax evasion and filing false returns).

It is well settled that the Board must consider mitigating factors when deciding on an appropriate sanction. *Veksler v. Board of Registration in Dentistry*, 429 Mass. at 650, 651 (1999). In the pending matter, the Magistrate identified mitigating factors, including, but not limited to the following:

- the Respondent's offense "did not involve any aspect of the practice of medicine;"⁶
- the Respondent practiced for twenty years without discipline by a state board or medical facility and without a history of patient complaints or malpractice claims;⁷
- the Respondent "provided excellent care and treated his patients with respect, kindness and empathy;"⁸ and
- the Respondent "has shown remorse for his behavior....devoted time in prison to better understanding his actions....has since recognized his tendency to engage in risk-taking behavior...[and] sought and continues to receive psychiatric care."⁹

⁶ Recommended Decision at p. 13.

⁷ *Id.*

⁸ *Id.* at p. 14.

⁹ *Id.* at p. 15.

Consistent with Board cases where the criminal conduct involves financial crimes unrelated to the practice of medicine, and in consideration of mitigating factors, the Respondent's inchoate right to revive his lapsed license is INDEFINITELY SUSPENDED. Any petition to terminate such suspension, shall contain documented completion of 100 hours of community service pursuant to a plan, approved in advance by the Board, and an evaluation by Physician Health Services (PHS) and compliance with any recommendations by PHS. Upon the Board's favorable review of such documentation and PHS evaluation, and termination of the suspension, the Respondent may file a lapsed license application which will be reviewed pursuant to all applicable regulations and policies.

The Respondent shall provide a complete copy of this Final Decision and 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 he practices medicine; any in- or out-of-state health maintenance organization with whom he has privileges or any other kind of association; any state agency, in- or out-of-state, with which he has a provider contract; any in- or out-of-state medical employer, whether or not he practices medicine there; the state licensing boards of all states in which he 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 he becomes associated for the duration of this suspension. The Respondent is further directed to certify to the Board within ten (10) days that he has complied with this directive.

The Respondent has the right to appeal this Final Decision and Order within thirty (30) days, pursuant to G.L. c. 30A, §§14 and 15, and G.L. c. 112, § 64.

Date: July 14, 2022



Julian Robinson, M.D.
Chair
Board of Registration in Medicine