

COMMONWEALTH OF MASSACHUSETTS  
BOARD OF REGISTRATION IN MEDICINE

MIDDLESEX, ss

Adjudicatory Case No. 2018-027  
(RM-18-0411)

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In the Matter of  
\_\_\_\_\_  
Donald Berman, M.D.  
\_\_\_\_\_

FINAL DECISION AND ORDER

Procedural History

On June 28, 2018, a Statement of Allegations (SOA) was issued against the Respondent and referred to the Division of Administrative Law Appeals (DALA) alleging that Donald Berman, M.D. (Respondent) had practiced medicine in violation of law, regulations, or good and accepted medical practice.

On July 14, 2018, a Notice of Pre-Hearing Conference was issued by DALA.

On July 18, 2018, the Respondent filed an Answer to the SOA.

A Pre-Hearing Conference Report was filed on September 19, 2018.

On January 11, 2023, by mutual agreement among the parties, Complaint Counsel filed a Joint Stipulation.

On January 26, 2023, the Administrative Magistrate issued a Recommended Decision with a Stipulation, which is attached hereto and incorporated by reference. No Objections to the Recommended Decision were filed.

On February 24, 2023, Complaint Counsel filed a Memorandum on Disposition.

Discussion and Sanction

The record demonstrates that on or about February 11, 2016, the Respondent entered into a stipulation with the Medical Quality Assurance Commission in the State of Washington (Washington Board) resolving allegations that he performed breast exams on two patients, without communicating that he was going to conduct such an exam, without offering either patient an opportunity to change into a gown and without offering either

patient the opportunity to have a chaperone present. As a result of the Washington Board's actions, the State of Connecticut imposed reciprocal discipline of a reprimand on his license in that state. The State of Pennsylvania imposed a civil penalty on his license in that state.

Pursuant to 243 CMR 1.03(5)(a)12, the Board is allowed to discipline a physician upon proof satisfactory to a majority of the Board, that said physician has been disciplined in another jurisdiction in any way by the proper licensing authority for reasons substantially the same as those set forth in G.L. c. 112, sec. 5 or 243 CMR 1.03(5). More specifically, the Respondent's actions would have violated 243 CMR 1.03(5)3 – engaging in conduct that places into question the Respondent's competence to practice medicine, and 243 CMR 1.03(a)(5)18 – committed misconduct in the practice of medicine. In addition, the Respondent's conduct would undermine the public confidence in the integrity of the medical profession *See Raymond v. Board of Registration in Medicine*, 387 Mass. 708 (1982); *Levy v. Board of Registration in Medicine*, 378 Mass. 519 (1979). Accordingly, it is proper for the Board to impose discipline.

Case law supports the right of the Board to impose reciprocal discipline. *See, Ramirez v. Board of Registration in Medicine*, 441 Mass. 479 (2004) (The physician entered into a Consent Order in Connecticut for improper conduct with three female patients, whereby he was fined \$2,000 and placed on probation for three years with permanent restrictions requiring him to have a female present during any examination of a disrobed or partially disrobed female patient. The Massachusetts Board imposed a sanction of indefinite suspension because he had been disciplined in another jurisdiction for reasons substantially the same as those allowed by 243 CMR 1.03(5)(a)(3); and *Anusavice v. Board of Registration in Dentistry*, 451 Mass 786, 798 (2008) (The Board of Dentistry in Massachusetts had the authority to impose reciprocal discipline, based on discipline imposed in a foreign jurisdiction, not contrary to the language of its enabling statute, and was rationally related to furthering the board's purpose to safeguard the public health and welfare. The court also concluded that a Consent Order entered into between the dentist and the Rhode Island Dentistry board constituted discipline for purposes of reciprocal discipline in Massachusetts).

In the present matter, the Respondent stipulated to an "Informal Disposition" in Washington for his actions involving his failing to communicate his intent to perform breast examinations on two women, failing to follow clinic protocols regarding changing clothes and failing to have a chaperone present with those same patients. The holding in the *Anusavice* case, quoting *Ramirez*, upholds the authority of the Board to discipline individuals such as the Respondent. In that case the court found:

Where, as here, charges of serious professional misconduct have been brought before the licensing board of a foreign jurisdiction, and the professional is afforded the full opportunity to challenge the truth of those allegations but has chosen to waive that opportunity, and to resolve the complaints by agreeing to discipline, we see no need for the Massachusetts board to take on the burden of conducting an out-of-State investigation, and attempting to prove those allegations in order to impose reciprocal discipline. *Ramirez*, supra at 482.

After consideration, the Board hereby REPRIMANDS the Respondent's license to practice medicine.

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 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 he 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. 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: March 23, 2023



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