

COMMONWEALTH OF MASSACHUSETTS

MIDDLESEX, SS.

BOARD OF REGISTRATION
IN MEDICINE

Adjudicatory Case No. 2021-021

In the Matter of)
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JOHN J. DIGGINS, M.D.)
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FINAL DECISION AND ORDER

Procedural History

The Board initiated this matter by issuing a Statement of Allegations (SOA) against the Respondent on April 22, 2021 and referring the matter to the Division of Administrative Law Appeals (“DALA”). The SOA ordered the Respondent to show cause why the Board should not impose discipline on his Massachusetts physician license on the basis of his criminal conduct for operating under the influence of alcohol on two occasions, in 2006 and 2019, and for his failure to maintain up-to-date medical records for an extended period of time at multiple places of employment. The DALA Magistrate conducted a hearing on September 1 and 2, 2021 and issued a Recommended Decision on June 28, 2021. In the Recommended Decision, the DALA Magistrate concluded that the Board may impose disciplinary measures on the Respondent based on his series of failures to maintain timely medical records and for his criminal conduct on October 6, 2019. Neither party submitted objections to the Recommended Decision; each party filed a Memorandum on Disposition.

After full consideration of the Recommended Decision, as well as the Parties' memoranda on disposition, the Board ADOPTS the January 21, 2022 Recommended Decision and incorporates it into this Final Decision and Order:

Discussion

The record indicates that, during sustained periods of time, the Respondent failed to maintain up-do-date medical records, even after being placed on performance improvement plans by multiple employers. In addition, on October 6, 2019, he committed the crime of operating a motor vehicle under the influence of alcohol ("OUI"), a second offense.

Through his actions, the Respondent:

(A) violated 243 CMR 2.07(13)(a), by failing to maintain a medical record for each patient that is complete, timely, legible, and adequate to enable a licensee or other health care provider to provide proper diagnosis and treatment; and

(B) engaged in conduct that undermines the public confidence in the integrity of the medical profession. Raymond v. Board of Registration in Medicine, 387 Mass. 708 (1982); and Levy v. Board of Registration in Medicine, 378 Mass. 519 (1979).

The findings of fact in this matter indicate that the Respondent's first instance of driving under the influence of alcohol dates back to 2006, and he has experienced periods of heavy drinking at several points between then and 2019. His inability to keep current with medical record keeping led to his resignation from two places of employment between 2014 and 2017, and recurred at a third place of employment in 2018 and 2019.

The DALA magistrate found that the record for this proceeding "reflects neither argument nor proof that public health and safety require Dr. Diggins' prompt separation from his patient population." The DALA magistrate also noted, "It is obvious that any curtailment of Dr.

Diggins' ability to treat patients would impose collateral pain both on those patients and on Dr. Diggins' employing institutions."

In fashioning a sanction in this matter, the Board first notes that there are two types of behaviors that must be addressed and considers precedent for each type of behavior. The first of these is the conviction for OUI and findings describing alcohol misuse. In the Matter of Daniel Marotta, M.D., Board of Registration in Medicine, Adjudicatory Case No. 2018-035 (Consent Order, August 9, 2018), (indefinite suspension stayed upon entry into five-year probation agreement in matter involving an OUI that was continued without a finding). In Marotta, the physician voluntarily entered into a PHS contract, like the Respondent, but also violated the terms of that contract on multiple occasions after being granted a limited license by the Board. The suspension held Dr. Marotta out of practice until he agreed to specific probationary terms intended to allow for substantial monitoring, as well as completion of a psychiatric evaluation.

The second behavior is inadequate medical record keeping. Probation is also supported by precedent in medical recordkeeping cases. Many matters involving recordkeeping violations are resolved via suspensions, mainly because they involve other acts of misconduct, such as prescribing violations and/or negligence but allow for such suspensions to be stayed upon entry into a probation agreement. See In the Matter of R. James Klingenstein, M.D., Board of Registration in Medicine, Adjudicatory Case No. 2012-012 (Consent Order, April 11, 2012)(indefinite suspension stayed upon entry into five-year probation agreement, and \$10,000 fine for physician who prescribed opioids to three patients in large quantities, even after being informed that one patient had developed an addiction, and without examining the patients or maintaining medical records).

In the present matter, the Respondent's recordkeeping violations are significant; the Respondent fell behind with hundreds of records and continued to experience these challenges repeatedly, even after being placed on performance improvement plans by multiple employers. The Respondent's struggles with alcohol misuse spanned a significant number of years. The Board acknowledges and commends the Respondent's efforts to redress both issues. He has maintained his sobriety since his OUI in 2019, successfully completed a twelve week residential program, and is continuing to be monitored by PHS. He also has a system in place at his current place of employment to help him tackle delays in record keeping before it spirals into a larger problem. While the Respondent has had measures in place since 2020 to support both his sobriety and record-keeping practices, his struggles with both alcohol misuse and record-keeping are notable for having recurred over an extended period of time. Accordingly, a longer period of monitoring, similar to that in Marotta and Klingenstein, is warranted in order for the Board to assure the public that the Respondent's improvements are on track to be equally long-lasting.

The Board takes note of the Magistrate's observation that removing the Respondent from practice would result in a disruption to his employers and the continuity of care for his patients. The Board is generally cognizant of the impact that suspension or revocation may have on persons other than the disciplined physician. Notably, this consequence is not unique to the Respondent, but rather, it is one that commonly presents when physicians face Board discipline. By itself, it would not justify a lesser sanction in matters where public protection is best served by removing a physician from practice. Nevertheless, in this matter, the Respondent's track record since 2020 is sufficient for the Board to determine that removal from practice is not necessary at this time, provided that the Respondent can maintain compliance with monitoring conditions.

Sanction

Based on the foregoing and pursuant to 243 CMR 1.05(2) which authorizes the Board to “otherwise discipline or limit the practice of a physician” in disposition of disciplinary charges, the Board hereby ADMONISHES the Respondent’s license to practice medicine. To ensure the public health, welfare and safety, the Board further RESTRICTS THE RESPONDENT’S PRACTICE such that Respondent may practice medicine subject to the following conditions which shall remain in effect throughout the monitoring period as defined in paragraph A below:

A. The Respondent may practice subject to monitoring by the Board for at least THREE YEARS from the date of this Final Decision and Order and for such further period thereafter as the Board may order on the basis of failure to comply with this Final Decision and Order. The three year monitoring period already reflects and credits two years of the time that Respondent has completed under his substance use monitoring contract with Physicians Health Services, Inc. (“PHS”) of the Massachusetts Medical Society. No early termination of the practice restriction will be allowed. Any periods during which the Respondent is not practicing medicine during the monitoring period, shall extend the monitoring period.

B. The Respondent shall refrain from all consumption of alcohol, and use of all controlled substances, unless specifically prescribed by a treating physician for a legitimate medical purpose and in the usual course of the treating physician’s medical practice. The treating physician shall have been informed of any substance abuse history of the Respondent before issuing any such prescription. The Respondent shall immediately notify the Board in writing any time that any treating physician writes a prescription for the Respondent for a controlled substance in Schedules II through IV, inclusive.

C. The Respondent acknowledges that self-prescribing of controlled substances in Schedules II-IV inclusive is prohibited, and that prescribing controlled substances in Schedules II-IV to an immediate family member is prohibited except in an emergency. *See*, 243 CMR 2.07 (19). Should the Respondent prescribe any controlled substances to himself or any immediate family member, he shall immediately notify the Executive Director of the Board in writing, and shall immediately provide the Executive Director of the Board a written copy of any such prescription and a full and complete written explanation of the reasons for any such prescription.

D. The Respondent has entered into a substance use monitoring contract, in a form acceptable to the Board, with PHS. The Respondent shall abide fully by all terms of this contract for the duration of this monitoring period. This contract includes a provision that PHS will immediately notify (within 24 hours) the Board of any lapse or violation of its terms by the Respondent, and the contract provides for any necessary waivers of privilege or confidentiality by the Respondent. PHS shall submit quarterly reports to the Board which detail the Respondent's compliance with this contract.

E. The Respondent shall undergo random bodily fluid screenings as required by PHS or as may be required by the Board, which requirement may be reasonably modified from time to time consistent with scientific or practical advances in the field of alcohol and drug detection. The Respondent shall submit random samples at least weekly on average, or at such other frequency as the Board or PHS may require, such as the requirement for daily samples using Sober-link, or a similar type device. An officer of PHS shall file reports of the screening evaluations completed during the previous three months with the Board within thirty (30) days as part of their quarterly report. Said reports shall specify the dates on which samples were taken and shall specify the results of the analysis of such samples and shall be signed by the person in

charge. In addition, the Respondent shall obtain the written agreement of PHS to notify the Board immediately by telephone and in writing.

1. a) in the event that Respondent's sample is found to contain any evidence of alcohol or any controlled substance in violation of this Final Decision and Order; or

b) in the event that PHS has other reliable evidence that the Respondent has used alcohol or any controlled substance in violation of this Final Decision and Order;

2. in the event that the Respondent misses any random bodily fluid test, excluding an administrative or laboratory mistake beyond the Respondent's control;

3. in the event that the Respondent refuses to cooperate with PHS in monitoring bodily fluids in any manner; or

4. in the event that the Respondent withdraws any waiver filed in connection with this Final Decision and Order; or

5. in the event that the PHS contract is terminated for any reason other than successful completion of the contract, as determined by the Director of PHS.

F. The Respondent shall at all times during the length of the monitoring period be reasonably available to provide an immediate bodily fluid screen at the request of the Board.

G. The Respondent shall be under the care of a Board-approved licensed or certified health care professional experienced in the treatment of substance use or substance abuse who shall submit written reports, including reports on all missed sessions, to the Board or its designee as often as the Board deems necessary but in any event at least once every three months. Copies of these attendance reports shall be part of the quarterly report that PHS submits to the Board.

The health care professional shall immediately notify the Board by telephone whenever, in his or her professional judgment, the Respondent poses a potential danger to the health, safety and

welfare of the Respondent's patients. In addition, the health care professional shall immediately notify the Board by telephone and in writing in the event that the Respondent terminates treatment, or is non-compliant with the treatment plan. In the event that the health care professional notifies the Board that the Respondent poses a danger to the health, safety or welfare of the Respondent's patients, or terminates treatment, the Board may obtain any and all information, reports and records from the health care provider concerning the Respondent. The Respondent hereby waives any privileges concerning such information, reports, records and disclosures to the Board. The health care professional shall confirm in writing, within thirty (30) days of the issuance of this Final Decision and Order, his agreement and undertaking with respect to the obligations set forth in this Final Decision and Order, and shall notify the Board if the Respondent withdraws any waiver filed in connection with this Final Decision and Order. The Respondent may not terminate treatment with, or change the identity of the health care professional without prior Board approval. The Respondent shall submit such information as the Board may require to identify the healthcare professional who shall fulfill the monitoring requirements of this paragraph.

H. The Respondent shall engage in the practice of medicine only under such conditions as the Board may impose and at a Board-approved worksite. The Respondent may only practice medicine at his current place of employment, Harrington Hospital in Southbridge, MA. The Respondent shall have a Board-approved worksite monitor. The Respondent's practice of medicine will be monitored by Dr. Aminadav Zakai, M.D., who shall file quarterly reports to the Board on a form provided by the Board and shall specifically include an assessment of timeliness and accuracy of Respondent's medical record keeping practice. In the event that Harrington Hospital or Dr. Zakai, or both, cannot accommodate Respondent's monitoring requirements, the

Respondent shall not engage in the practice of medicine until the Board approves another worksite or worksite monitor or both.

I. The Respondent shall file, within thirty (30) days of the issuance of this Final Decision and Order, written releases and authorizations sufficiently broad in scope so as to allow the Board to obtain any and all medical and laboratory reports, treating physicians' reports and records concerning the Respondent's treatment and monitoring during the monitoring period.

J. All agreements whereby third parties are to provide written reports, releases, records or any other information to the Board under this Final Decision and Order shall be submitted to the Board for approval within thirty (30) days after issuance of the Final Decision and Order. All such releases and agreements must, in addition to waiving any relevant state law privileges or immunities, provide the Board with access to all material covered by 42 CFR, Part 2, and the Criminal Offender Records Information (CORI) Act, so-called, M.G.L. c. 6, ss. 167-178; all such releases and agreements must provide that the released party shall notify the Board if any waiver is withdrawn. In the event that any such releases or waivers are not sufficient to obtain access to any information which the Board in its discretion considers relevant, the Respondent shall personally obtain such information and furnish it to the Board, to the extent permitted by law.

K. In the event that the Respondent seeks licensure to practice medicine in another state, the Respondent shall notify the Board of such fact and shall disclose to the licensing authority in such state his status with this Board. The Respondent shall submit to the Board copies of all correspondence and application materials submitted to another state's licensing authority.

L. In the event the Respondent should leave Massachusetts to reside or practice out of the state, the Respondent shall promptly notify the Board in writing of the new location as well as the dates of departure and return. Periods of residency or practice outside Massachusetts will not

apply to the reduction of any period of the Respondent's monitoring period, unless the Respondent enters into a substantially equivalent monitoring agreement, approved by the Board, in the new location.

M. The Respondent shall appear before the Board or a committee of its members at such times as the Board may request, upon reasonable advance notice, commensurate with the gravity or urgency of the need for such meeting as determined by the Board or such committee.

N. The Respondent, and not the Board, shall be responsible for the payment of any fee or charge occasioned by the Respondent's compliance with this Final Decision and Order.

O. The Respondent may request that the Board modify any of the conditions set forth above. The Board may, in its discretion, grant such modification. Except for requests for modifications related to the identity of the health care professional referenced in Paragraph G, and the Respondent's employment, the Respondent may make such a request not more than once in any one year period.

P. 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 Drug Enforcement Administration, Boston Diversion Group; Department of Public Health Drug Control Program, and the state licensing boards of all states in which he has any kind of license to practice medicine. The Respondent shall also provide this notification to any

such designated entities with which he becomes associated for the duration of the monitoring period. 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.

Q. The Respondent shall comply with all laws and regulations governing the practice of medicine, and not engage in any conduct which constitutes grounds for complaint pursuant to 243 CMR 1.03(5).

R. The Respondent shall timely renew his license to practice medicine.

Provided that the Respondent has complied with the monitoring conditions set in this Final Decision and Order, the Board, shall, upon petition by the Respondent, terminate the practice restriction on Respondent's license at the expiration of the monitoring period, inclusive of any extensions of the monitoring period in accordance with paragraph A.

In the event that Respondent fails to comply with any of the monitoring conditions set in this Final Decision and Order, the Board may immediately suspend Respondent's license to practice medicine, or extend the monitoring period, or impose any lesser sanction as the Board deems appropriate.

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: June 2, 2022



Julian Robinson, M.D.
Chair