

COMMONWEALTH OF MASSACHUSETTS

Middlesex, SS.

Board of Registration in Medicine
Adjudicatory Case No. 2022-035

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In the Matter of)
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SCOTT J. DOWD, M.D.)
_____)

FINAL DECISION AND ORDER

Procedural History

The Board initiated this matter by issuing a Statement of Allegations (SOA) against the Respondent on September 22, 2022, and referred the SOA 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 for lacking good moral character and engaging in conduct that undermines the public confidence in the integrity of the medical profession and for his conviction for one count of aggravated driving while intoxicated and three counts of reckless conduct with a dangerous weapon.

On December 21, 2022, the Board moved for summary decision based on Respondent's conviction. On January 26, 2023, the DALA Administrative Magistrate (Magistrate) issued his Recommended Decision on Motion for Summary Decision (Recommended Decision), concluding that the Board is entitled to summary decision based on Respondent's conviction under 243 CMR 1.03(5)(a)(7) and thereby undermining the public confidence in the integrity of the medical profession¹ under *Levy v. Board of Registration in Medicine*, 378 Mass. 519 (1979) (*Levy*) and *Raymond v. Board of Registration in Medicine*, 387 Mass. 708 (1982) (*Raymond*).² Neither party filed objections and each party timely submitted a memorandum on disposition.

¹ The full articulation of the SOA's legal basis under *Levy* and *Raymond* is that "[t]he Board may discipline a physician upon proof satisfactory to a majority of the Board that said physician lacks good moral character and has engaged in conduct that undermines the confidence in the integrity of the medical profession."

² The SOA contained a third legal basis for discipline—Respondent's conduct placed into question his competence to practice medicine pursuant to 243 CMR 1.03(5)(a)(3). Two additional legal grounds for discipline were advanced in the Board's motion for summary decision that Respondent practiced medicine deceitfully under 243 CMR 1.03(5)(a)(10) and he committed misconduct in the practice of medicine pursuant to 243 CMR 1.03(5)(a)(18). In finding that Respondent's misconduct occurred in his personal capacity, unrelated to the practice of medicine, the

At its meeting on May 25, 2023, the Board reviewed the Recommended Decision and the Memoranda on Disposition and heard from the parties on the issue of sanction. The Board notes from the outset that the Magistrate did not make a finding as to Respondent's good moral character, which is a subpart of the basis for discipline under *Levy* and *Raymond* as alleged in the SOA. The Board has found lack of good moral character in felony convictions. See *In the Matter of Harold Altvater, M.D.*, Board of Registration in Medicine, Adjudicatory Case No. 2019-039 (Final Decision and Order, July 14, 2022)(commenting that "[c]ommission of a felony is conclusive evidence of lack of good moral character at the time of the offense").³ Here, the Respondent was convicted of four felony offenses.⁴ The Board is within its purview to apply the law to the Magistrate's factual findings to conclude that Respondent's four felony convictions warrant the conclusion that he lacked good moral character at the time of his misconduct. In concluding such, the Board amends the Recommended Decision by finding that the Respondent lacked good moral character at the time of the misconduct. Thus amended, the Board hereby adopts the Recommended Decision and incorporates it into its Final Decision and Order.

Discussion

The Recommended Decision concludes Respondent was convicted of one count of aggravated driving while intoxicated and three counts of reckless conduct with a deadly weapon. The Rockingham Superior Court in New Hampshire sentenced Respondent to a minimum of 3.5 years prison, and he is currently incarcerated in New Hampshire state prison. For purposes of sanction, the Board may discipline Respondent for his conviction pursuant to 243 CMR

Magistrate did not find undisputed material facts in Respondent's admissions to the SOA and details in the indictment to support those three legal grounds.

³ See *In the Matter of John E. Christ, M.D.*, Board of Registration in Medicine, Adjudicatory Case No. 94-34-DALA (Final Decision and Order, November 9, 1994) (amending recommended decision concluding respondent lacked good moral character for felony conviction for attempted first degree murder and revoking medical license); *In the Matter of Walter Simmons, M.D.*, Adjudicatory Case No. 2022-012 (Final Decision and Order, February 2, 2023)(concluding respondent lacked good moral character, inter alia, and revoking license for felony conviction on three counts of wrongful use of a unique health identifier, in violation of 42 U.S.C. § 1320d-6(a)); and *In the Matter of Mrugeshkumar K. Shah, M.D.*, Board of Registration in Medicine, Adjudicatory Case No. 2020-024 (Final Decision & Order, November 18, 2021)(finding respondent lacked good moral character and revoking inchoate right to renew premised on felony conviction for federal health care fraud).

⁴ Respondent was convicted for four crimes, all of which are classified as felonies by New Hampshire law. By law, Reckless Conduct with Deadly Weapon is defined as a class B felony pursuant to NH Revised Statutes § 631:3 ("Reckless conduct is a class B felony if the person uses a deadly weapon as defined in RSA 625:11"). Respondent's state prison sentence of 2-5 years for Aggravated Driving While Intoxicated is categorized as a class B felony pursuant to NH Revised Statutes § 625:9 ("Class B felonies are crimes so designated by statute within or outside this code and any crime defined outside of this code for which the maximum penalty, exclusive of fine, is imprisonment in excess of one year but not in excess of 7 years").

1.03(5)(a)(3) and on the basis that Respondent's criminal misconduct lacks good moral character and undermines the public confidence in the integrity of the medical profession pursuant to *Levy* and *Raymond*. The Magistrate also found that Respondent's conduct caused serious bodily injury to a 5-year-old girl.

When fashioning a sanction related to a criminal conduct, the Board considers "the nature of the offense, whether the criminal conduct occurred during the course of the practice of medicine or was related to the practice of medicine, the impact of the physician's misconduct and any mitigating or aggravating circumstances." *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).

The Board has sanctioned OUI criminal charges resolved by CWOFF or guilty plea with indefinite suspension followed by a period of probation and monitored sobriety. *See In the Matter of Angela Steinhardt, M.D.*, Board of Registration in Medicine, Adjudicatory Case No. 2020-022 (Final Decision & Order, August 4, 2022)(indefinite suspension immediately stayed 60 days to enter into Probation Agreement); *In the Matter of David S. Robinson, M.D.*, Board of Registration in Medicine, Adjudicatory Case No. 2021-026 (Consent Order, June 3, 2021)(indefinite suspension of license premised on an OUI charge CWOFF and admission of impaired practice); and *In the Matter of Kristin Howard, M.D.*, Board of Registration in Medicine, Adjudicatory Case No. 2017-010 (Consent Order, March 23, 2017)(indefinite suspension of inchoate right to renew premised on guilty plea for OUI Causing Serious Bodily Injury and Leaving the Scene of an Accident, sentenced to 3 years of probation)(hereinafter, *Howard*). In Respondent's case, the Board is not sanctioning misdemeanor OUI conduct, but felony convictions.

Sanction

The Magistrate did not find Respondent's criminal conduct was related to the practice of medicine but did find that Respondent drove at a high rate of speed and seriously injured a 5-year-old girl, which findings relates to the impact of his misconduct and are aggravating factors. The Magistrate observed that Respondent entered into a Voluntary Agreement Not to Practice,

which the Board has recognized as a factor in mitigation of sanction.⁵ For the reasons above, *Howard* offers fair guidance to determining the appropriate sanction in the instant matter.

Given the findings of fact, conclusions of law and factors in aggravation and mitigation set forth in the Recommended Decision, the Board hereby INDEFINITELY SUSPENDS the Respondent's inchoate right to renew his license to practice medicine. Respondent may petition for a stay no earlier than a year after his release from state prison and obtains a substance abuse evaluation (evaluation) by a Board-approved physician board-certified in psychiatry and neurology with acknowledged expertise in addiction medicine. The stay will be conditioned on Respondent's entry into probation agreement that shall include all conditions that the Board deems appropriate at the time including, but not limited to, any recommendations forthcoming from the evaluation.

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 which 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 with 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 revocation or subsequent Probation Agreement. 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 taken.

⁵ The Board has viewed entering into a Voluntary Agreement Not to Practice as a mitigating factor. See *In the Matter of Douglas A. Janowski, M.D.*, Board of Registration in Medicine, Adjudicatory Case No. 2011-032 (Final Decision & Order, February 20, 2013) (physician's license indefinitely suspended after he inappropriately touched two (2) patients but immediately entered into a VANP and underwent treatment).

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.

A handwritten signature in black ink, appearing to read 'JR', with a long horizontal stroke extending to the right.

DATE: May 25, 2023

Julian Robinson, M.D.
Chair