

COMMONWEALTH OF MASSACHUSETTS

Middlesex, SS

Board of Registration in Medicine  
Adjudicatory No. 2020-2010

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In the Matter of )  
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Gabriel Luna, M.D. )  
\_\_\_\_\_)

Final Decision and Order

Procedural History

On February 20, 2020, the Board of Medicine (Board) commenced disciplinary proceedings against Gabriel Luna, M.D. (Respondent) by issuing both a Statement of Allegations against the Respondent and an Order of Temporary Suspension. The Board referred both to the Division of Administrative Law Appeals (DALA) for a hearing on the Order of Temporary Suspension and further proceedings with respect to the charges in the Statement of Allegations. On April 2, 2020, the Board issued an Amended Statement of Allegations (SOA) and referred that to DALA for further proceedings.

On March 6, 2020, DALA issued a Recommended Decision on Summary Suspension (Decision on Summary Suspension) with the determination that the Board had not proved, by a preponderance of the evidence, that the Respondent posed a serious threat to public health and safety.<sup>1</sup> On March 19, 2020, the Board adopted the Decision on Summary Suspension and vacated the Respondent's suspension.

On December 15, 2022, DALA Magistrate James P. Rooney (Magistrate) issued a Recommended Decision on the merits of the SOA. The Magistrate concluded that the Board had proved, by a preponderance of the evidence, that the Respondent:

- has been convicted of a crime, a basis for discipline pursuant to 243 CMR 1.03(5)(a)7; and

<sup>1</sup> See *Sheldon Randall v. Board of Registration in Medicine*, Slip. Op. SJ-2014-0475 (Cordy, J. June 9, 2015).

- has engaged in conduct that has the capacity to deceive, a basis for discipline, pursuant to 243 CMR 1.03(5)(a)7.<sup>2</sup>

In February of 2023, the Petitioner filed Objections to the Recommended Decision (Objections) and the Respondent filed a Response to the Objections. In May of 2023, the Parties filed Memoranda on Disposition.

On May 30, 2023, the Respondent filed a Motion to Strike the Petitioner's Memorandum on Disposition (Motion to Strike), based on inconsistencies between the "Relevant Facts" as stated in the Petitioner's Memorandum and those in Recommended Decision. The Board denies the Motion but considers the Petitioner's Memorandum only with respect to the analysis considered in light of the Findings of Fact and Conclusions of Law stated by the Magistrate.

The Board has heard from the Parties and has fully considered the Recommended Decision, the Parties' Objections<sup>3</sup> and Response to the Objections, and the Parties' Memoranda on Disposition. After full consideration of the Parties' submissions, and the Magistrate's Recommended Decision, which is attached hereto and incorporated by reference, the Board ADOPTS the Recommended Decision, as amended, to strike the Magistrate's commentary, on pages 21-22 of the Recommended Decision, with respect to *Welter v. Board of Registration in Medicine*, 490 Mass. 718 (2022) and whether the elements of common law fraud, including but not limited to intent, must be proved with respect to fraudulent procurement of a license. As the Magistrate states, "[F]raudulent procurement of a license was not at issue in *Welter*."

#### Discussion

The record reflects that, in 2013, the Respondent was criminally charged following a 2011 car accident in which he injured a motorcyclist. In 2014, the Respondent pled to no contest to two misdemeanor charges, culpable negligence with personal injury and leaving the scene of

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<sup>2</sup> The Magistrate concluded that the Board did not prove, by a preponderance of the evidence, that the Respondent;

- fraudulently procured his certificate of registration or renewal, a basis for discipline pursuant to G.L. c. 112, §5, tenth par. (a) and 243 CMR 1.03(5)(a)1; or

- lacked good moral character and engaged in conduct that undermines the public confidence in the integrity of the medical profession, a basis for discipline pursuant to *Levy v. Board of Registration in Medicine*, 378 Mass. 519 (1979); *Raymond v. Board of Registration in Medicine*, 387 Mass. 708 (1982) and *Sugarman v. Board of Registration in Medicine*, 422 Mass. 338 (1996).

<sup>3</sup> The Board has noted the Petitioner's Objections and has provided an adequate statement of reasons for its decision; the Board is not required to answer each specific objection in its decision. *Arthurs v. Board of Registration in Medicine*, 383 Mass. 289 (1981).

an accident involving property damage. Having been convicted of a crime is a basis for Board discipline pursuant to 243 CMR 1.03(5)(a)7.

The Respondent did not report his criminal charges on his 2013 and 2014 limited license applications and on his 2015 full license application. He did not report his charges on an application for a leave of absence from his residency program. During the leave, the Respondent served time in jail and completed the community service requirement of his sentence.

The Respondent "knowingly failed to reveal that he was to serve a jail sentence while on leave and the subject of that misstatement was obviously susceptible of his actual knowledge since he knew he was deliberately leaving out this information...[H]e should have known that [his program] and the Board might think this information would be relevant to the decision each was to make."<sup>4</sup> Engaging in conduct that has the capacity to deceive is a basis for Board discipline pursuant to 1.03(5)(a)10.

#### Sanction

As a function of this Board's obligation to protect the public health, safety, and welfare, it is proper for the Board to discipline the Respondent. See Levy v. Board of Registration in Medicine, 378 Mass. 519 (1979).

"In its system of initial licensure and re-licensure, the Board depends on the accuracy and integrity of the information provided by physicians...[R]epeated acts of providing false information deprived the Board of the opportunity to review [the physician's] record in order to determine whether licensure or employment was appropriate."<sup>5</sup> The Board "depends on the integrity and honor of...applicants and...any lapse in this fundamental element of the process is a basic threat to the reasonably prompt and fair physician licensure system in the Commonwealth."<sup>6</sup>

A physician who engages in conduct that has the capacity to deceive by failing to furnish information completely and accurately to health care consumers, regulatory agencies, or health care facilities deprives the those relying on the information to make informed choices. When a

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<sup>4</sup> Recommended Decision at p. 26.

<sup>5</sup> *In the Matter of Praveen N. Adhyapak, M.D.*, Board of Medicine, Adjudicatory Case No. 2005-033 (Final Decision and Order, December 7, 2005) and cases cited therein.

<sup>6</sup> *In the Matter of James David Fenn, M.D.*, Board of Medicine, Adjudicatory Case No. 2013-033. (Amended Final Decision and Order, April 16, 2015) citing *In the Matter of John R. Knight, M.D.*, Board of Medicine, Adjudicatory Case No. 895-26-GR (Final Decision and Order, December 10, 1986).

physician engaged in deceptive conduct with respect to the manner in which he held out his colleague's training, he deprived patients of an opportunity to make an informed choice in selecting a health care provider.<sup>7</sup>

In the pendant case, the Respondent failed to accurately respond to questions on licensing applications. In so doing, he deprived the Board the opportunity to make informed decisions when making licensure decisions, lessening the ability of the Board to protect the public. Similarly, the Respondent failed to furnish his training program with accurate and complete information concerning his need for a leave of absence, depriving the program from making an informed choice.

The Board tailors its sanction to deter other physicians from engaging in similar deceptive practices and thereby protect the integrity of the licensure system. In fashioning a sanction, the Board considers mitigating factors in this matter. With respect to the Respondent's criminal charges, the Board considers, as mitigating factors:

- the Respondent's accident was the consequence of the excessive amount of work the doctor had put in that week, the sleepiness he experienced while driving home, and his failure to realize at the time that he should not have tried to drive home; and
- the Respondent, in his sleep-deprived state, did not realize that he had injured someone.

With respect to the Respondent's failure to accurately respond, on three occasions, to licensure questions with respect to criminal charges, the Board considers, as mitigating factors:

- the Respondent did not intend to mislead in his answer to the charges questions on the limited and full license applications;<sup>8</sup> and
- the Respondent relied on his attorney's counsel that he could validly answer "no" to the criminal charges question, since the question did not seek charges related to

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<sup>7</sup> See *In the Matter of Ryan J. Welter, M.D.*, Board of Medicine, Adjudicatory Case No. 2019-029 (RM-19-0282)(Final Decision and Order, March 11, 2021).

<sup>8</sup> The Board has acknowledged that an inaccurate answer that was due to "oversight or carelessness" is insufficient to prove fraudulent intent to procure a license. See *In the Matter of Charles M. Poser, M.D.*, Board of Medicine, Adjudicatory Case No. 88-62-SU (Final Decision and Order, December 20, 1989).

traffic offenses and reliance on counsel would be sufficient to show lack of intent.<sup>9</sup>

On the basis of the foregoing, the Board hereby ADMONISHES 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 admonishment. 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.



Dated: June 15, 2023

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Julian N. Robinson, M.D.  
Board Chair

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<sup>9</sup> See *Board of Registration in Medicine v. Bock*, Adjudicatory Case No. 2019-037 (Final Decision and Order, October 7, 2021)(incorporated Recommended Decision at 6).