

COMMONWEALTH OF MASSACHUSETTS
BOARD OF REGISTRATION IN MEDICINE

MIDDLESEX, ss

Adjudicatory Case No. 2020-049
(RM-20-0616)

)
In the Matter of)
)

Leonardo Riella, M.D.)
_____)

FINAL DECISION AND ORDER

Procedural History

The Board of Registration in Medicine (Board) initiated this proceeding by issuing a Statement of Allegations (SOA) on November 20, 2020 and referring the matter to the Division of Administrative Law Appeals (DALA) on that date. On August 10, 2021, the DALA Magistrate conducted a hearing. On December 10, 2021, both parties submitted post-hearing memoranda, at which time the administrative record closed.

On February 7, 2022, the DALA Magistrate issued a Recommended Decision in which the Magistrate found that the Board did prove by a preponderance of the evidence that the Respondent committed misconduct in the practice of medicine, engaged in conduct that undermines public confidence in the integrity of the medical profession, and lacked good moral character when he accessed the Electronic Medical Record (EMR) of Patient A (not his patient) to gain an advantage against Patient A in a lawsuit that he had brought against Patient A.

The Respondent filed Objections to the Recommended Decision on March 9, 2022. Each party filed a Memorandum on Disposition on March 31, 2022.

The Board has reviewed the Recommended Decision, the Objections and the Memoranda on Disposition¹. On the basis of its review the Board hereby adopts the

¹ The Board has noted the Respondent's Objections to the Recommended Decision 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. 299, 418 N.E.2d 1236 (1981). Insofar as Respondent's objections also assert that the magistrate erred by finding Mrs. Riella's uncontroverted testimony to be non-credible, the Board notes first that pursuant to 801 CMR 1.01(11)(c)2., the Board may not reject the magistrate's determination of credibility of witnesses personally appearing.

Recommended Decision, which is attached hereto and incorporated by reference, and further, amends and clarifies:

- that with regard to any references to Exhibit 5 in the Recommended Decision, the Board finds that Exhibit 5 was effectively excluded from evidence and therefore did not consider it, or references to it, in its deliberations
- that with regard to paragraph 16 in the Recommended Decision, the board replaces the finding “He also admitted to disclosing Patient A’s appointment information to his wife,” with the finding “He also disclosed Patient A’s appointment information to another person, either his wife or lawyer.” The Board further amends the supporting citation in paragraph 16 to strike the reference to “Ex. 5” and replace it with “Ex. 4” and further to add pages 105-107 to the Transcript page citation².

At its meeting on June 30, 2022, following its review of the Recommended Decision, the Objections and the Memoranda on Disposition, the Board heard from the parties on the issue of Sanction. The Board also took into consideration a Victim Impact Statement that was submitted by Patient A, and reviewed by Respondent, in accordance with G.L. c. 112, § 5.

Discussion and Sanction

In cases where physicians have improperly accessed medical records, but have not disclosed the records to a third party, the Board has typically reprimanded physicians. *See, In the Matter of Allison August, M.D.*, Board of Registration in Medicine, Adjudicatory Case No. 2009-015 (Consent Order, May 20, 2009) (reprimanding physician who improperly accessed EMRs of two fellow physicians/friends); *In the Matter of Boris Murillo, M.D.*, Board of Registration in Medicine, Adjudicatory Case No.

The Board next notes that the magistrate may disbelieve even uncontroverted testimony. *See MacLeod v. Commonwealth Cap. Funding Corp.*, 2000 Mass. App. Div. 239 (Dist. Ct. 2000)

² The conclusion by the Magistrate that the Respondent disclosed the information to his wife is supported by testimony from the Respondent’s supervisor, Dr. Bonventre, and also from the letter in the Respondent’s file at the hospital immortalizing the findings of the hospital’s investigation (Exhibit 4), which letter was admitted into evidence by the Magistrate and is uncontroverted. It states in part, “Further, you admitted to wrongfully accessing the patient’s medical record and disclosing certain information contained therein for personal reasons.”

2007-065 (Consent Order, December 19, 2007) (reprimanding and fining physician who, without having a legitimate medical purpose, accessed EMR of nurse he was dating and also improperly accessed EMR of second employee on multiple occasions); and *In the Matter of Michael Minev, M.D.*, Board of Registration in Medicine, Adjudicatory Case No. 2007-062 (Consent Order, December 5, 2007) (reprimanding limited licensee who improperly accessed EMR of chief resident).

The Board has imposed more harsh sanctions where physicians have accessed patient medical records to further personal interests **and** disclosed information in the record to third parties. See, *In the Matter of Josephine Scotto DiCarlo, M.D.*, Board of Registration in Medicine, Adjudicatory Case No. 2006-040 (Final Decision and Order, December 20, 2006) (imposing suspension, stayed upon payment of \$2,500 fine where physician accessed a third party/non-patient's medical record and disclosed private medical information to an unauthorized third party; non-patient was dating physician's son); *In the Matter of Deborah Sichel, M.D.*, Final Decision and Order, Adjudicatory Case No. 02-58-DALA (Board of Registration in Medicine, September 1, 2004) (Physician was indefinitely suspended, fined \$2500, and restricted from seeking a stay for an additional eighteen months, when she accessed the medical records of non-patients in effort to aid physician/husband's defense to a board complaint where the non-patients were complainants). See also, *In the Matter of Muriel Sugarman, M.D.*, Board of Registration in Medicine, Adjudicatory Case No. 93-12-DALA (Final Decision and Order, September 28, 1994), *aff'd. sub. nom. Sugarman v. Board of Registration in Medicine*, 422 Mass 338 (1996) (imposing indefinite suspension, \$10,000 fine, and community service for releasing a confidential report containing psychiatric evaluations to the press).

When determining the appropriate sanction where there has been a violation of the laws and rules relating to the practice of medicine, the Board may discipline the Respondent³, based on misconduct pursuant to 243 CMR 1.03(5)(a)(18), lack of good

³ The Board is the sole determinant of discipline pursuant to an interagency agreement between the Board and DALA dated July 19, 1990, wherein DALA acknowledges, "DALA will be bound by the Board's statute, regulations and case precedents. DALA will give deference to Board policies and guidelines.....DALA specifically disclaims any role in setting medical-legal policy for the Commonwealth. For the purposes of judicial review of the Board's decisions, DALA acknowledges that the Board is the administrative agency charged with administering G.L. c. 112, secs. 2-9."

moral character and engaging in conduct that undermines the public confidence in the integrity of the medical profession. See *Levy v. Board of Registration in Medicine*, 378 Mass. 519, 392 N.E. 2d 1036. See also, *Raymond v. Board of Registration in Medicine*, 387 Mass. 708, 713, 443 N.E. 2d 391, 395 (1982). Quoting language from *Hellman v. Board of Registration in Medicine*, 404 Mass. 800, 804 (1989):

.....improper conduct or wrong behavior, but as used in speech and in law it implies that the conduct complained of was willed and intentional. It is more than that conduct which comes about by reason of error of judgment or lack of diligence. It involves intentional wrongdoing or lack of concern for one's conduct. Whether or not an act constitutes misconduct must be determined from the facts surrounding the act, the nature of the act, and the intention of the actor.

The facts of the present matter are egregious in that Respondent knowingly and improperly accessed the medical records of Patient A, who was never his patient, without any medical reason, and disclosed that information to his wife. He did so for personal gain. He did so to seek leverage as part of a lawsuit that he initiated against Patient A.

The Board takes specific note of Respondent's argument that the Board should impose a lesser sanction or no sanction upon Respondent due to the fact that he is a specialist who serves vulnerable populations who would be adversely impacted if he were removed from practice or otherwise disciplined and unable to continue to serve them. As the Board recently noted:

"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." *In the Matter of John J. Diggins, M.D.*, Board of Registration in Medicine, Adjudicatory Case No. 2021-021 (Final Decision and Order, June 2, 2022)

The Board further adds that public protection would not be served if the Board established a practice of imposing lesser sanctions upon physicians who serve underserved populations. Imposing lesser sanctions on physicians who serve such populations does nothing to protect the vulnerable. Rather it exposes them to physicians with a track record of misconduct and creates a tiered standard system where physicians deemed

unacceptable for more privileged populations are acceptable for the vulnerable ones. Accordingly, the Board rejects the idea that service to vulnerable populations may be claimed as a shield from sanction.

Based on the foregoing, the Board hereby INDEFINITELY SUSPENDS the Respondent's license to practice medicine, with an immediate stay of that suspension for ninety (90) days to allow for payment of a fine of \$2,500, and a plan, to be pre-approved by the Board, for completion of ten (10) hours of Category 1 Continuing Professional Development courses, in addition to those required for licensure, in the area of patient medical record confidentiality and requirements of the Health Insurance Portability and Accountability act (HIPAA). Upon fulfillment of these requirements, the suspension will be lifted.

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; 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 this suspension. 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: June 30, 2022



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