

COMMONWEALTH OF MASSACHUSETTS

MIDDLESEX, SS.

BOARD OF REGISTRATION
IN MEDICINE

Adjudicatory Case No. 2018-046

In the Matter of

JOSEPH V. THAKURIA, M.D.

FINAL DECISION AND ORDER

Procedural History

The Board initiated this matter by issuing a Statement of Allegations ("SOA") against the Respondent on October 11, 2018 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 violations of the Board's regulations by failing to timely complete clinical documentation for patients and by failing to make required disclosures on his 2014 full renewal and 2016 lapsed license applications. The DALA Magistrate conducted a hearing on September 27 and December 17, 2019 and issued a Recommended Decision on March 11, 2022. In the Recommended Decision, the Magistrate concluded that the violations rose to a level where discipline may be imposed by the Board, based on the proposed legal bases for discipline set forth in the March 11, 2022 SOA.

After full consideration of the Recommended Decision, as well as the Parties' memoranda on disposition, the Board ADOPTS the March 11, 2022 Recommended Decision and incorporates it into this Final Decision and Order:

Discussion

The record indicates that the Respondent failed to timely complete clinical documentation for patients at Massachusetts General Hospital ("MGH") and was subject to a memorandum of understanding to rectify these "chronic deficiencies" in 2011, followed by a formal period of probation in 2013 when the issues recurred. The Respondent failed to report this probationary period, and changes to the terms of his employment, on his 2014 License Renewal Application, as required. On the same application, he did not disclose an investigation by MGH into his failure to obtain prospective approval for a research initiative and the fact that he was found to have violated institutional policy. The record further demonstrates that the Respondent failed to disclose criminal charges on his 2016 Lapsed License Application, including a charge for driving with a suspended license, stemming from an Operating Under the Influence ("OUI") charge in 2015, as well as full and accurate details of the OUI offense.

Through his actions, the Respondent:

(A) violated 243 CMR 1.03(5)(a)(15), by failing to report to the Board disciplinary action taken against him by a health care institution for acts or conduct substantially the same as acts or conduct that would constitute grounds for a Board complaint against him;

(B) violated G.L. c. 112, §5, ¶ 8(a) and 243 CMR 1.03(5)(a)(1), by fraudulently procuring his certificate of registration or its renewal;

(C) violated 243 CMR 1.03(5)(a)(10), by practicing medicine deceitfully, or engaging in conduct which has the capacity to deceive or defraud;

(D) violated Board regulations concerning the maintenance of patient medical records, pursuant to and G.L. 112, §5, ¶ 8(h) and 243 CMR 1.03(5)(a)(11); and

(E) demonstrated a lack of "good moral character" and engaged in "conduct that undermines the public confidence in the integrity of the medical profession." See Raymond v. Board of Registration in Medicine, 387 Mass. 708 (1982); and Levy v. Board of Registration in Medicine, 378 Mass. 519 (1979).

The Board generally imposes the sanction of a reprimand and fine for physicians who fail to report information to the Board on their license applications. Historically, the Board has imposed a fine of \$2,500 for each fraudulent answer, the amount multiplying with each offense. See In the Matter of Peter Gherardi M.D., Board of Registration in Medicine, Adjudicatory Case No. 2008-030 (Consent Order, August 20, 2008)(reprimand and \$5,000 fine for physician who failed to disclose an arrest on his limited license and initial full license applications, and for failing to disclose a subsequent arrest on a renewal); In the Matter of Henri Lamothe, M.D., Board of Registration in Medicine, Adjudicatory Case No. 2009-002 (Consent Order, January 21, 2008)(reprimand and \$5,000 fine for physician who failed to disclose one medical malpractice claim on two different renewal applications and a separate malpractice claim on one renewal application); In the Matter of Samuel B. Wilson, M.D., Board of Registration in Medicine, Adjudicatory Case No. 2007-023 (Consent Order, May 16, 2007)(reprimand and \$2,500 fine for physician who disclosed only one of two OUI arrests on a renewal application); In the Matter of Kingsley Chin, M.D., Board of Registration in Medicine, Adjudicatory Case No. 2005-062 (Consent Order, December 21, 2005)(reprimand and \$7,500 fine for physician who failed to disclose on a limited license renewal and a full license application that he had been placed on probation during residency, failed to disclose on a full license application in Florida that he had been placed on probation during residency, and failed to disclose on a Massachusetts full application that he had been disciplined by the Florida Board of Medicine); and In the Matter

of Peter K. Harman, M.D., Board of Registration in Medicine, Adjudicatory Case No. 03-17-XX (Consent Order, June 18, 2003)(reprimand and \$7,500 fine for physician who failed to disclose multiple criminal charges, including motor vehicle insurance fraud and larceny).

In his memorandum on disposition, the Respondent relies on In the Matter of Carmen L. Pisc, M.D., Board of Registration in Medicine, Adjudicatory Case No. 2019-002 (Consent Order, January 10, 2019), as opposed to any of the cases cited above. Dr. Pisc, he claims, received an admonishment for a more egregious misrepresentation. The Respondent distinguishes his case from Dr. Pisc's matter because "he did not provide knowingly false information the way Dr. Pisc did when she stated that she had pled not guilty and had been found innocent." Reliance on the Pisc matter falls flat for two reasons. First, it is too late for the Respondent to make the argument that he left information off his license application without knowledge that he was misrepresenting the facts, either directly or through omission. Magistrate McGrath found that the Respondent knew or should have known that a certain level of detail was required. Specifically, the Magistrate states on page 15 of the Recommended Decision, "I did not find Dr. Thakuria's testimony on these points credible and I am persuaded that he knew that the Board asked for the information and that he should provide it." For the Respondent to say he did not provide knowingly false information is a red herring.

Secondly, there was only one legal conclusion in Pisc, specifically fraudulent procurement pursuant to 243 CMR 1.03(5)(a)(10), in connection with one license application in 2018. In the Respondent's case, he failed to properly disclose information relating to two criminal charges, as well as hospital discipline, spanning two separate applications. This pattern of behavior requires a different analysis than Pisc.

In addition to the conduct described above, the Respondent violated Board regulations concerning medical recordkeeping. The Board has previously stated that “record-keeping failures are not ‘technical’ violations, because accurate and current medical records are absolutely essential in maintaining a patient’s health and welfare.” See In the Matter of Vernon Kellogg, M.D., Board of Registration in Medicine, Adjudicatory Case No. 2007-044 (Final Decision and Order, May 19, 2010, at 3, which cites In the Matter of Peter J. Krokidas, M.D., Board of Registration in Medicine, Adjudicatory Case No. 88-36-CA (Final Decision and Order, June 7, 1989). It should be noted that the Kellogg matter was resolved through a revocation of the physician’s inchoate right to renew his license. In addition to medical record keeping violations, Dr. Kellogg was found to have engaged in fraudulent procurement of licensure, prescribing violations, refusal to cooperate with the Board, and uninsured medical practice with fraudulent conduct intended to conceal this status. The findings of fact presented by the Respondent’s case do not rise to such a level, but cases such as Kellogg demonstrate how record keeping violations, when combined with other acts of misconduct require a sanction that appropriately addresses the depth and breadth of the violations.

In his argument on sanction, the Respondent relies almost exclusively on the recent case of John J. Diggins, M.D., Board of Registration in Medicine, Adjudicatory Case No. 2021-021 (Final Decision and Order, June 2, 2022). In that case, Dr. Diggins engaged in a series of failures to maintain timely medical records and was charged with OUI (second offense) and negligent operation of a motor vehicle in 2019. Thereafter, Dr. Diggins entered a monitoring contract with Physician Health Services (“PHS”). Dr. Diggins remained compliant with his PHS contract, returning to work in 2020. His medical recordkeeping ceased being an issue as a result of a monitoring program at his place of employment. As the Respondent notes, the Board

imposed an admonishment and a practice restriction in the Diggins matter, such that he could practice only subject to certain conditions which included monitoring for three years. This period of monitoring reflected and credited two years of monitoring through a PHS contract and employment based record keeping program.

It appears that the Respondent's reliance on the Diggins matter rests on the fact that an admonishment was imposed as one part of the sanction (as opposed to a reprimand or suspension), and that medical recordkeeping violations were a shared issue. However, the Respondent is clear in his Memorandum that he does not wish to be placed under a monitoring agreement, which is the most important and potent feature of this particular sanction. In reality, the Respondent's case is not similar enough to the Diggins case to present a useful comparison. Moreover, the Respondent makes several conclusions relating to the Final Decision and Order that were not actually stated therein.¹

Finally, the Respondent requests that the Board consider what he describes as mitigating factors and remedial measures. To this end, he cites "steps taken to rectify his record keeping deficiencies even prior to the initiation of this action, his otherwise exemplary professional record, remedial action courses that he completed after being charged with motor vehicle offenses, and the fact that these charges stemmed from a single incident, and Dr. Thakuria has absolutely no other history of criminal conduct or substance abuse." The Board is of the view that the appropriate time to consider these actions would have been when/if they had been

¹ For instance, the Respondent argues that "Dr. Diggins' deficient record keeping, a symptom of his substance abuse disorder, was so profound that it 'led to his resignation from two places of employment between 2014 and 2017 [...]'". In truth, a causal connection between Dr. Diggins' alcohol misuse and his issues with documentation was specifically rejected by the Administrative Magistrate in that case. In addition, the Respondent argues that the Board tailored a sanction for Dr. Diggins which involved an admonishment "despite the significant, ongoing risk to public health and safety suggested by Dr. Diggins' history of substance abuse [...]" In the Diggins Final Decision and Order, the Board determined that this was not a matter in which public protection would be best served by removing him from practice and that Dr. Diggins' positive track record at work since 2020 and the past two years of compliance with his PHS contract warranted this outcome. The Board does not allow physicians back into practice who present significant, ongoing risks to the public, as the Respondent appears to suggest.

reported appropriately by the Respondent on his license applications. Moreover, the Magistrate concluded that the Respondent lacked credibility in his testimony that he did not know that the Board asked for this information and that he should provide it.

Sanction

Based on the foregoing, the Board hereby REPRIMANDS the Respondent's license to practice medicine and FINES the Respondent \$5,000, payable within ninety (90) days of the issuance of this Final Decision and Order. The Board will not renew the license of any physician who fails to pay a fine in a timely fashion; this step will be taken automatically and no further notice or process will apply.

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: August 4, 2022

A handwritten signature in black ink, appearing to read 'Julian Robinson', with a long horizontal line extending to the right.

Julian Robinson, M.D.
Chair