

COMMONWEALTH OF MASSACHUSETTS

Middlesex, ss.

Division of Administrative Law Appeals

Board of Registration in Medicine,
Petitioner

Docket No. RM-19-0351

v.

Harold Altwater, M.D.
Respondent

Appearance for Petitioner:

Lisa L. Fuccione, Esq.
Board of Registration in Medicine
Harvard Mill Square, Suite 330
Wakefield, MA 01880

Appearance for Respondent:

Paul Cirel, Esq.
Ingrid S. Martin, Esq.
Todd & Weld LLP
One Federal Street
Boston, Massachusetts 02110

Administrative Magistrate:

Bonney Cashin

Summary of Recommended Decision

The Board of Registration in Medicine has proven that the Respondent is subject to discipline, pursuant to 243 CMR 1.03(5)(a)(7), based on his conviction for securities fraud. Based on prior Board decisions, his conviction suffices to show he has engaged in conduct that undermines the public's confidence in the integrity of the medical profession. The Board has not proved that he lacks good moral character. I recommend that the Board impose appropriate discipline after considering mitigating factors.

RECOMMENDED DECISION

On July 17, 2019, the Board of Registration in Medicine (“Board”; “Massachusetts Board”) issued a statement of allegations ordering Harold Altvater, M.D., to show cause why he should not be disciplined by the Board for practicing medicine that was in violation of law, regulations, or good and accepted medical practice. Specifically, pursuant to 243 CMR 1.03(5)(a)(7), the Board proposed disciplining Dr. Altvater because he was convicted of three counts of securities fraud. That same day, the Board filed a Motion for Summary Suspension of Dr. Altvater’s license and referred the matter to the Division of Administrative Law Appeals (“DALA”). On November 21, 2019, Dr. Altvater filed an answer to the Board’s statement of allegations.

On July 24, 2019, I held a hearing on the Motion for Summary Suspension at DALA at 14 Summer Street, 4th floor, Malden, MA. On October 15, 2019, I issued a Recommended Decision to vacate the Summary Suspension because the Board failed to establish by a preponderance of the evidence that Dr. Altvater, who was in federal prison at the time, was an immediate and serious threat to the public health, welfare, and safety. On May 8, 2020, the Board adopted the Recommended Decision as its Final Decision, vacating the Order of Summary Suspension.

On January 13, 2020, the Board filed a Motion for Summary Decision on the merits of Dr. Altvater’s disciplinary case, pursuant to 801 CMR 1.01(7)(h). Dr. Altvater filed an Opposition to the Motion on March 2, 2020, arguing that a hearing was necessary to address mitigating factors and arguments regarding the appropriate level of discipline. I agreed that the Board was required to provide an opportunity for Dr. Altvater to present mitigating factors and denied the Board’s motion. *See Veksler v. Board of Reg. in Dentistry*, 429 Mass. 650 (1999)

(holding that dentist convicted of Medicaid fraud had right to a hearing on mitigation prior to final board disciplinary action).

On July 13, 2020, the parties filed a joint pre-hearing memorandum with stipulated facts and exhibits. The stipulated facts addressed Dr. Altvater's criminal conviction and his lack of prior disciplinary and criminal history. On July 29, 2020, I held a hearing via Webex on the statement of allegations. Two witnesses testified, Dr. Altvater and his former office manager, Kimberly Ann Walton. I admitted four exhibits into evidence (Exs. 1-4.)¹ The hearing was recorded and transcribed. The parties filed their post-hearing briefs on October 19, 2020 and the record was closed.

FINDINGS OF FACT

Undisputed Facts

The parties agreed to certain facts, as set forth in Ex. 1:

1. Harold Altvater, M.D., was born in 1961. He graduated from the University of Vermont College of Medicine in 1994. He is certified by the American Board of Anesthesiology.
2. Dr. Altvater has been licensed to practice medicine in Massachusetts under certificate number 159845 since July 28, 1999.
3. Dr. Altvater has no history of discipline by any licensing authority or medical facility prior to this matter.
4. Dr. Altvater has no history of malpractice claims.
5. On July 20, 2017, Dr. Altvater was charged with three counts of securities fraud in the United States District Court for the District of Massachusetts.

¹ Exhibit 1 is the parties' stipulated facts. Exhibit 2 consists of Dr. Altvater's resume. Exhibit 3 consists of the U.S. District Court of Massachusetts Judgment. Exhibit 4 consists of Letters Regarding Sentencing of Dr. Altvater, all submitted to the U.S. District Court.

6. According to the indictment, between October 2013 and January 2014 Dr. Altvater illegally traded shares of stock in Ariad Pharmaceuticals Inc. based on nonpublic information that his wife, a senior drug safety executive at Ariad, learned during the course of her employment and shared with him.

7. The charges did not involve Dr. Altvater's medical practice or his medical license.

8. On October 10, 2018, a jury convicted Dr. Altvater of all three counts of securities fraud.

9. On January 16, 2019, Dr. Altvater was sentenced in the United States District Court, District of Massachusetts, to a commitment to the Bureau of Prisons for 18 months followed by one year of supervised probation.

10. On February 28, 2019, Dr. Altvater offered to enter into a Voluntary Agreement Not to Practice.

11. On June 25, 2020, Dr. Altvater was released from custody.

Additional Findings of Fact

Based upon the documentary and testimonial evidence presented, and the reasonable inferences drawn therefrom, I make the following findings of fact:

12. Before medical school, Dr. Altvater worked as a medical laboratory specialist while in the United States Air Force and as an intensive care nurse. (Ex. 2.)

13. After graduating from the University of Vermont College of Medicine in 1994, Dr. Altvater completed a residency in anesthesiology at the University of Florida. (Ex. 2.; Tr. 1: 51-52.)²

² References to the hearing transcript will be designated by transcript volume and page number.

14. Dr. Altvater worked as an anesthesiologist from 1998 to 2011. (Ex. 2; Tr. 1: 51-52.)

15. Dr. Altvater and Maureen Curran first met in the mid-1980s while working as nurses in New York. They were married in 2002. (Ex. 4; Tr. 1: 94.)

16. In 2011, Dr. Altvater started a private practice cannabis clinic, called Delta 9 Medical Consulting ("Delta 9"). He transitioned to medical cannabis practice because he was "burned out" from the practice of anesthesiology amid the politics and work environment of a large hospital and thus found his work to be less rewarding. He found the field of medical cannabis "intriguing" and in line with his background in anesthesiology. (Ex. 2; Tr. I: 52-53).

17. Dr. Altvater's private practice included seeing patients with pre-existing medical conditions that qualified them for state-issued medical marijuana certificates and providing the Commonwealth of Massachusetts with information on the patients' eligibility for the certificates. (Tr. I: 106.)

18. Dr. Altvater ensured that his clinic complied with the Americans with Disabilities Act and that his wheelchair-bound patients were able to access the clinic independently. (Tr. 54-55.)

19. Dr. Altvater designed the offices and scheduled appointments to maximize patient privacy, as it is a major concern with this medication. (Tr. I: 25; 54-55.)

20. Dr. Altvater's practice was low volume; he saw about 30 to 40 patients per week. Tr. I: 58-59.)

21. Some patients were chronically ill or close to the end of life. Dr. Altvater would go to a patient's home without charge if the patient was unable to come to the office. (Tr. I: 29, 64-65.)

22. When a patient booked an initial appointment, Dr. Altvater obtained medical records to review the patient's history and verify that the patient had been diagnosed by another doctor within the past year with a "debilitating condition" that qualified the patient for cannabis treatment. Before the first visit, the patient completed a detailed medical questionnaire, including questions on the patient's familiarity with cannabis and the patient's criminal history. (Tr. I: 59-61.)

23. Dr. Altvater was careful to protect patient privacy when reviewing medical records and other personal information. Patients never complained about mishandling of their private information. (Tr. I: 28, 61-62.)

24. Patients liked Dr. Altvater because he "took an interest in their condition and how they were using marijuana." (Tr. I: 28.)

25. Dr. Altvater offered discounts to veterans seeking relief from service-related injuries including PTSD. (Ex. 4.)

26. Dr. Altvater wrote a letter for a patient supporting the use of medical cannabis for post-traumatic stress disorder because of severe domestic violence. The patient stated: "Dr. Altvater was professionally compassionate, attentive and understanding in every way," that he "basically saved [her] from a life of eternal despair with no hope of ever being truly free in the past" and that he turned her life around. (Ex. 4.)

27. Dr. Altvater's patients were referred by other physicians or his other patients. (Tr. I: 64.)

28. Kimberly Ann Walton was a patient of Dr. Altvater and later became the office manager for Delta 9 from 2014 to 2019, except for a brief time in 2017. (Tr. I: 15-16.)

29. Once Ms. Walton became an employee, Dr. Altvater no longer treated her. (Tr. I: 20.)

30. Ms. Walton worked at home and handled scheduling, billing, and medical record organization. She conducted initial patient intakes. (Tr. I: 20-21.)

31. Ms. Walton interacted with Dr. Altvater's patients daily by phone. She went into the Delta 9 offices a few times a year. She personally observed Dr. Altvater's interactions with patients on about 60 occasions over the five years she worked for him.³ (Tr. I: 21, 45.)

32. As of 2013 and into early 2014, Dr. Altvater's ex-wife was a senior employee with the title of Senior Director of Pharmacovigilant and Risk Management at Ariad. (Tr. I: 81-82.)

33. She worked hard to rise in the company and was passionate about her work in drug safety and management. (Tr. I: 82.)

34. Dr. Altvater believed that he owed his ex-wife a duty of trust and confidence and that his wife had a reasonable expectation of confidentiality in what she disclosed to him about Ariad's business---information she was privy to as a senior employee. (Tr. I: 97.)

35. During at least one conversation between Dr. Altvater and his ex-wife between the summer of 2013 and January 2014, she asked him not to trade in Ariad stock. After this conversation, Dr. Altvater traded in Ariad stock. (Tr. I: 81-82, 96.)

36. In March 2014, Dr. Altvater's wife resigned from her job at Ariad. (Tr. I: 84-86, 89.)

³ The Board's post-hearing brief states that Ms. Walton observed Dr. Altvater with his patients on six (6) occasions. Ms. Walton testified that she personally observed patients with Dr. Altvater on about sixty (60) occasions and this point was not further disputed by Board counsel during the DALA hearing. (Tr. I: 44-45.)

37. In 2016, Dr. Altvater told an SEC investigator that his wife resigned because he had ruined her reputation at Ariad. Otherwise, when pressed, Dr. Altvater was reluctant to acknowledge that her resignation was a consequence of his trades based on information she revealed to him. (Tr. I: 83.)

38. From about 2015 onwards, Ms. Walton and Dr. Altvater became friends. (Tr. I: 40-41.)

39. In early 2016, when the FBI first visited Dr. Altvater's office, Ms. Walton realized that Dr. Altvater was going to be arrested. She was surprised to learn that Dr. Altvater engaged in illegal conduct. (Ex. 2; Tr. I: 37, 42-43.)

40. In 2017, Dr. Altvater and his wife were divorced. (Tr. I: 94.)

41. Before his federal trial began in October 2018, Dr. Altvater knew that his ex-wife would have to testify about her relationship with him and how the illegal stock trades occurred during their marriage. (Tr. I: 93-94.)

42. Dr. Altvater's ex-wife provided a thoughtful character reference prior to his sentencing. She wrote that her trust in his "medical/nursing skills is as strong today as it has been in the past." She addressed his "many good traits" and his "several flaws," including a gambling addiction, that caused great pain and suffering for the family. In closing, his ex-wife said: "For me, the mistakes he's made do not obviate the positive aspects of his character...I accept his apology and have forgiven him for his transgressions involving me." (Ex. 4 at 2-3.)

43. After his sentencing, Dr. Altvater closed his medical practice in early March and reported to prison on March 15, 2019. (Tr. I: 69-70, Ex. 3.)

44. The U.S. District Court imposed a sentence below the range provided in the federal Guidelines Manual. The reasons identified for the variance were: (1) to "reflect the

seriousness of the offense, promote respect for the law, and provide just punishment for the offense"; (2) to "afford adequate deterrence to criminal conduct"; and (3) to "protect the public from further crimes of the defendant." (Ex. 3.)

45. The U.S. District Court further recommended that Dr. Altvater participate in a gambling addiction program. Dr. Altvater's gambling addiction was raised at his sentencing. He recognized that gambling was one of several risk-taking behaviors he had engaged in over the years, including certain types of stock trading and speeding on his motorcycle. He completed an 8- or 10-week treatment program as required by the Bureau of Prisons. (Tr. I: 73, 99, Ex. 3.)

46. Dr. Altvater was subject to drug testing while in prison. He has never been diagnosed with a substance use disorder. (Tr. I: 75.)

47. After leaving prison, Dr. Altvater was sent to a halfway house where he was psychologically evaluated over 5 to 6 weeks. (Tr. I: 72, 100.)

48. At the time of the administrative hearing, Dr. Altvater was serving one year on probation. A sentencing requirement was that he participate in addiction treatment programs as directed by the Probation Office. (Tr. I: 74.)

49. After several interviews with his probation officer, Dr. Altvater was not required to participate further in a gambling addiction recovery program. He complies with the requirement that he check in monthly by computer. (Tr. I: 99, 100.)

50. Dr. Altvater acknowledged that:

. . . unfortunately there were victims of my crime that were my own family -- two people I love the most, my ex-wife and my daughter. And this was -- I beg for forgiveness . . . and I know that was the most severe consequence of all of this that prison time. . . .[W]hen you fail your child [by] providing [an] inadequate role model which I don't think I took serious in life. . . . Now I have a firmer understanding. I now work to show her we accept responsibilities for things you do in life.

(Tr. I: 78.)

51. Dr. Altvater does not see a benefit in continuing to participate in gambling addiction recovery programs. He explained his decreased desire for risk-taking behaviors as follows:

I became more involved in terms of spiritual content while I was in prison like a lot of men do [I went] to nightly Bible studies. I continue to do that on the outside. In my life, I never really had time for the Scripture or God, and I didn't grow up in a family with that....I've really come to embrace that, and so my idle time is more constructive now.

(Tr. I: 79-80, 100-101.)

52. Dr. Altvater sees a Veteran's Healthcare psychiatrist monthly and finds these sessions helpful. During his sessions he discusses all aspects of his recovery and release from prison, including stress management, his future plans, and approaches to decision-making. (Tr. I: 101.)

53. Dr. Altvater works at Lowe's Home Improvement. (Tr. I: 51.)

54. Dr. Altvater wishes to return to the practice of medicine because he has "always made it a point in [his] life to reach out and help folks that were disenfranchised a lot with traditional medical approaches and guide them safely to being able to deal better with life." (Tr. I: 81.)

55. He has no preference for an area of medicine he wishes to pursue; he is open to several possibilities and would consider a solo or group practice. (Tr. I: 106-107.)

56. Both Dr. Altvater's ex-wife and their daughter describe him as an attentive and encouraging father. (Ex. 4.)

57. Dr. Altvater's daughter acknowledged that life was not easy as a result of his conduct. Yet her father was the person who helped her through that difficult period. She believed

him to be an “extremely valuable and respected” doctor in the community who has treated many cognitive and physical ailments, goes to patient’s houses as needed, and checks up on his patients frequently. (Ex. 4 at 4.)

58. Dr. Altvater’s daughter, who worked at her father’s office, believed that he “approached all patients with dignity and respect,” was “conscientious and hard-working,” and treated patients as “individuals rather than opportunities for profit.” (Ex. 4 at 4, 7.)

59. Dr. Altvater’s fellow Air Force veteran and friend of nearly 40 years described how his patient care “extended beyond his office, visiting patients in their homes, outside of normal office hours.” Dr. Altvater’s friend also recognized that he accepts full responsibility and has sought forgiveness for his actions. (Ex. 4 at 7, 8.)

60. Healthcare professionals who worked with Dr. Altvater found him trustworthy, generous, and knowledgeable. In spite of her personal and professional difficulties following his stock trades, Dr. Altvater’s ex-wife considers him to be a person of integrity. (Ex. 4.)

61. Dr. Altvater has supported his ex-wife and his friends during times when their family members were quite ill by advocating for the family’s medical needs and providing a “sense of peace and comfort to [them] through his steady presence.” His friends recount how he checked in with them regularly when their family members and spouses were ill and provided comfort and support to friends when their loved ones passed away. (Ex. 4.)

62. Dr. Altvater is charitable – he does favors for his friends, their families, and his employees without expecting anything in return. For instance, he voluntarily did errands for his friend’s mother, and he bought a GPS for Ms. Walton’s car. (Ex. 4; Walton Test., at 44.)

63. Dr. Altvater is held in high regard by his family, friends, and colleagues.

DISCUSSION

A. Discipline Based on Criminal Conviction

Dr. Altvater violated G.L. c. 112, § 5 and 243 CMR 1.03(5)(a)7 by committing securities fraud, a crime for which he was convicted and served a prison sentence. The Board is authorized to discipline physicians who have been convicted of “any crime.” G.L. c. 112, § 5; 243 CMR 1.03(5)(a)7; *Levy v. Board of Reg. in Med.*, 378 Mass. 519, 526 (1979). In *Levy*, the doctor’s crimes were larceny and submitting false data while he owned and managed several nursing homes. *Levy* at 520-521. Dr. Altvater concedes, as he must, that the Board has a basis to discipline him based on his conviction for securities fraud.

The purpose of disciplinary action is to protect the public and patients. *See Arthurs v. Board of Reg. in Med.*, 383 Mass. 299, 314, 317 (1981) (sanctioning physicians after they are convicted of crimes is not for the purpose of punishment but is instead to protect the public from harm); *Levy*, 378 Mass. at 527 (same). The Board has considerable discretion when deciding what sanction to impose for the violations it proves. *Sugarman v. Board of Reg. in Med.*, 422 Mass. 338, 347-348 (1976) citing *Kvitha v. Board of Reg. in Med.*, 407 Mass. 140, 143 (1990). The Board may consider the nature of the crime when determining the appropriate sanction. *Levy*, 378 Mass. at 526 n.8. At the same time, it is well settled that the Board must consider mitigating factors when deciding on an appropriate sanction. *Veksler*, 429 Mass. at 650, 651.

B. Hearing Evidence

At the hearing, the parties focused on the presence or absence of mitigating factors. In addition to the testimony he offered, Dr. Altvater provided ten letters from friends, family, and others that had been submitted to the District Court Judge for Dr. Altvater’s sentencing hearing. (Ex. 4.) Obviously, the letters’ authors want to present Dr. Altvater in a favorable light. I credit

the statements made in the letters, although the authors of them did not testify, because the letters were prepared for a serious purpose before a federal court, and no evidence rebutted the statements. I treat them as evidence of his reputation in the community.

The letters and hearing testimony shed light on Dr. Altvater's practice of medicine in the years preceding his criminal conviction, his acknowledgment of the negative effects of his conduct, and his personal and professional character over many years. These are all factors the Board may consider when deciding on the appropriate level of discipline.

Patient Care

Dr. Altvater practiced medicine for twenty years without disciplinary action by any state medical board or any medical facility. No malpractice claims or patient complaints have been lodged against him. Dr. Altvater's securities fraud conviction did not involve any aspect of the practice of medicine.

Ms. Walton, Dr. Altvater's former office manager, who observed him with patients in person on about 60 occasions and had daily phone contact with his patients, testified positively about Dr. Altvater's medical care of them.

Most of Dr. Altvater's patient referrals came from other physicians and word-of-mouth, which provides some evidence of the medical community's trust in his care. A former patient remarked that Dr. Altvater saved her from a life of despair by acknowledging and treating her for a traumatic disorder arising from domestic violence.

The record provides examples of Dr. Altvater's individualized attention to his patients' experiences, including accommodations to afford patients comfort and privacy. Dr. Altvater designed his offices so that patients with mobility impairments had equal access to care. Dr. Altvater provided additional time in between patient appointments, which allowed for greater

privacy. Ms. Walton testified that she never received patient complaints about improper disclosure of protected health information. Dr. Altvater went to patient's homes, at no additional fee, to accommodate those who were either too ill or disabled to leave their houses or were nearing the end of their lives.

In sum, the record shows that Dr. Altvater provided excellent care and treated his patients with respect, kindness, and empathy.

Family

It is undisputed that Dr. Altvater's illegal conduct harmed his family. Dr. Altvater's ex-wife resigned from a position she worked hard to earn and one she cared deeply about. In the end, however, she accepted Dr. Altvater's apology and forgave him for his transgressions involving her. Dr. Altvater's daughter acknowledged that life was not easy for her because of his conduct. Yet her father was the person who helped her navigate that difficult period. She described her father as an extremely valuable and respected doctor in the community. Dr. Altvater expressed sincere remorse over the pain and disappointment he caused his ex-wife and daughter through his actions.

The Board argues that Dr. Altvater's conduct of breaching spousal trust may be even more "egregious" than cases where the doctors' criminal conduct involved defrauding government entities. The Board attempts to impute Dr. Altvater's breach of spousal trust to his treatment of patients. I see no evidentiary support for the contention that he is less likely to respect and honor the trust that must exist between a doctor and his patients because of his private conduct with his spouse.

Reputation

The letters in Ex. 4 show Dr. Altvater to be a person of integrity and good character. Dr. Altvater's ex-wife and daughter describe him as an attentive and encouraging father. He supported friends and family during difficult times.

Remorse, Responsibility for Conduct

Dr. Altvater has shown remorse for his behavior. He accepts full responsibility for his actions leading to his arrest and conviction. He devoted time in prison to better understanding his actions. He has since recognized his tendency to engage in risk-taking behavior and now better understands the motive behind it. He sought and continues to receive psychiatric care. All indications are that he will not engage in harmful conduct toward others, including his patients.

Lifelong friends of Dr. Altvater's relayed how remorseful he was for his mistakes and the way his actions have inflicted hardship upon his family.

The Board suggests that Dr. Altvater either does not have a gambling addiction or is in denial about it because, during his testimony, he downplayed his addiction and did not accept the role his addiction had played in his criminal conduct. I find little support for the Board's argument. Dr. Altvater admitted to a gambling addiction at his sentencing. He completed a gambling treatment program during his 18-month incarceration. He was evaluated while in a halfway house and was released without any requirement related to addiction. Following several interviews with his probation officer, he was not required to participate in a recovery program as a condition of probation. Dr. Altvater explained that he does not wish to continue attending further gambling addiction programs because his newfound connection to spirituality greatly reduces his desire for risk-taking behavior.

I found Dr. Altvater to be sincere in his understanding of his addiction and his lack of desire to gamble. He recognizes the possibility of relapse and continues to see a mental health professional with whom he can discuss a desire to gamble should it arise in the future. Taken together, the evidence shows that Dr. Altvater admits his risk-seeking behavior was a problem, is aware that it is still a potential problem, and has acknowledged its contribution to his criminal conduct.

C. Discipline Based on Lack of Good Moral Character and Conduct Undermining Public's Confidence in Integrity of Medical Profession

The Board also alleged that Dr. Altvater lacks good moral character and has engaged in conduct that undermines the public's confidence in the integrity of the medical profession. *Raymond v. Board of Reg. in Med.*, 387 Mass. 708 (1982) (Board may adopt policies by adjudication as well as formal rulemaking; it did so here by announcing that lack of good moral character and conduct that undermines public confidence in the integrity of the medical profession are grounds for discipline). In granting the Board the authority to discipline physicians the Legislature "set up a plan whereby those who practice medicine will have the qualifications which will prevent, as far as possible, the evils which could result from ignorance or incompetency or a lack of honesty or integrity." *Levy*, 378 Mass. at 527-528. (citation omitted.)

In contrast to *Levy*, which concerned financial crimes involving the physician's practice of medicine, in *Raymond* the sanctioned conduct—selling and possessing unregistered firearms—was not related to the practice of medicine. As the Supreme Judicial Court, however, observed, "[i]t is difficult to conceive of an attitude more antithetical to a commitment to preserve life, alleviate suffering, and restore health, than the mentality demonstrated by knowing possession of unregistered automatic submachine guns." *Raymond* at 712.

Conduct undermining public confidence in medical profession

Dr. Altvater has been convicted of a crime. The Board has a basis to discipline him under the principles in *Raymond* and *Levy*.

Lack of good moral character


In this case there is considerable evidence concerning Dr. Altvater's moral character over his adult life as a nurse and physician and as a husband, father, and friend. There is no dispute that Dr. Altvater made a serious mistake when he improperly used information his wife told him in confidence, but the weight of the evidence is that this mistake is not representative of Dr. Altvater's overall character, a term defined as "the complex of mental and ethical traits marking and often individualizing a person...." <http://www.merriam-webster.com/dictionary/character>. To the contrary, the weight of the evidence is that Dr. Altvater is a caring physician who treated his patients with respect and that he is now a man who has done his best to make amends to his family, his friends, and his community for the mistake he made. The Board's focus on the significance of Dr. Altvater's conduct to his marriage vows strays into an area of private conduct that seems beyond the Board's charge to protect the public and patients from harm. Under the particular facts of this case, I cannot equate his conviction for insider trading with lack of good moral character.⁴

⁴ The Board's decisions in *Matter of Barrocas, M.D.*, RM-20-0230 Final Decision and Order (Dec. 17, 2020) and, more recently, *Matter of Pedro, D.O.*, RM-18-662 Final Decision and Order (Dec. 16, 2021) are not to the contrary and do not compel a different result. In *Barrocas*, a matter decided at DALA on default, the Board's sanction was imposed based on its legal conclusion that Dr. Barrocas was disciplined in another jurisdiction by the proper licensing authority for reasons substantially the same as those set forth in G.L. c. 112, § 5 or 243 CMR 1.03(5) and that he engaged in conduct that undermines the public confidence in the integrity of the medical profession. Dr. Barrocas was not disciplined for lack of good moral character. While the Board referenced Barrocas's lack of good moral character in its Final Decision and Order, it was not the legal basis for the sanction imposed, and thus is dicta. *Pedro* stands for the conclusion that a physician's admission to criminal conduct in the absence of a conviction can be a basis for Board discipline under *Raymond* and *Levy*. The magistrate who conducted the hearing in *Pedro* found that paying another person for sex establishes lack of good moral character and is conduct that undermines the public's confidence in the medical profession within the meaning of *Raymond*.

CONCLUSION

The Board may discipline Dr. Altvater based on his criminal conviction and for engaging in conduct that undermines the public's confidence in the integrity of the medical profession. The Board did not prove that Dr. Altvater lacks good moral character. I recommend the Board impose on Dr. Altvater what it finds to be appropriate discipline, after considering the mitigating factors found in this decision.

DIVISION OF ADMINISTRATIVE LAW APPEALS



Bonney Cashin
Administrative Magistrate

Dated: **FEB - 7 2022**