

COMMONWEALTH OF MASSACHUSETTS

Middlesex, ss.

Division of Administrative Law Appeals

Board of Registration in Medicine,  
Petitioner

v.

Docket No. RM-22-0379

Mark R. Brody, M.D.,  
Respondent

Appearance for Petitioner:

*Pro se*

182 Gano Street  
Providence, R.I. 02906

Appearance for Respondent:

Rachel N. Shute, Esq.  
Board of Registration in Medicine  
178 Albion Street, Suite 330  
Wakefield, MA 01880

Administrative Magistrate:

Kenneth J. Forton

SUMMARY OF RECOMMENDED DECISION

The Board of Registration in Medicine seeks to reciprocally discipline the Respondent. As the grounds for his discipline in another jurisdiction are substantially similar to grounds upon which the Board itself could have disciplined him, the Division of Administrative Law Appeals recommends that the Board's motion for summary decision be allowed and that the Board take appropriate action.

RECOMMENDED DECISION

The Division of Administrative Law Appeals (DALA) received this case on referral from Petitioner Massachusetts Board of Registration in Medicine (the Board),

which seeks recommended findings of fact and conclusions of law. On September 9, 2022, the Board issued a statement of allegations ordering Respondent Mark R. Brody, M.D. to show cause why he should not be disciplined here for having been disciplined by the Rhode Island Board of Medical Licensure and Discipline (R.I. Board) for reasons substantially the same as those set forth at G.L. c. 112, § 5 and 243 CMR 1.03(5).

On October 28, 2022, I held a pre-hearing conference. The parties agreed to have the matter decided on the papers. On November 4, 2022, the Board filed its motion for summary decision and memorandum of law. The Board submitted copies of the three R.I. Board orders of discipline, which I entered as Exhibits 1, 2, and 3. On the same day (though it was dated October 14, 2022), Dr. Brody submitted his opposition to the Board's motion and a cross motion for summary decision. Subsequently, the administrative record was closed.

#### FINDINGS OF FACT

The following facts are not in dispute:

1. Dr. Brody graduated from Columbia University College of Physicians and Surgeons in 1986. He was licensed to practice medicine in Massachusetts from 1991 to 2003, when his license lapsed because he did not renew it. Dr. Brody is board certified in psychiatry. He has a private practice in Providence, Rhode Island. (Stipulation.)
2. He was also licensed to practice medicine in Rhode Island. (Exs. 1, 2, 3.)
3. On April 14, 2021, the R.I. Board ratified a consent order and reprimanded Dr. Brody for engaging in unprofessional conduct in violation of R.I. Gen. Laws § 5-37-5.1(19). The R.I. Board required Dr. Brody to complete and successfully pass the Center for Professional Education for Professionals Probe course. (Ex. 1.)

4. As part of the R.I. Board's April 14, 2021 Consent Order, the Respondent admitted to the following facts. The Respondent sent unsolicited letters to his patients advising them "not to accept the coronavirus vaccine at the time, regardless of who the manufacturer is, and what you may be told by those who may want to persuade you to take it." The Respondent's letter stated: "Given the news and previously untested RNA technologies being employed with this vaccination, and preliminary scientific evidence, there exists the possibility of sterilizing all females in the population who receive the vaccination, disrupting recipient's DNA, which controls and regulates who and what we are, and other unpredictable long term health consequences." The Respondent's letter also stated: "Whether coming from greed, politics or ignorance, authorities within government and the media have become untethered from science in promoting a pooling and inadequately tested product, which they wish to inject into you without having verified what it is their responsibility to verify that the vaccine is safe and effective."

(Ex. 1.)

5. The R.I. Board determined that Respondent's "confident and deliberate adherence to and repetition of the false claims, despite lack of expertise in the field, is likely to harm his patients to whom he has decidedly not presented . . . a balanced discussion of the risks and benefits of the vaccines." The R.I. Board further concluded that Dr. Brody's letter "communicated advice to his patients and constituted the practice of medicine" and that "multiple assertions contained within the letter and repeated to the [R.I. Board's] Investigative Committee were, on the whole, misinformed, revealing a general lack of expertise in the field, and, in several instances, were patently false." (Ex.

1.)

6. On July 14, 2021, the R.I. Board ratified a subsequent consent order and suspended the Respondent's medical license for engaging in unprofessional conduct in violation of R.I. Gen. Laws § 5-37-5.1(19) and (24) and for violating the rules and regulations for Licensure and Discipline of Physicians, 216 R.I. Code R. §§ 40-5-1.5.5(A), 40-5-1.5.12(D). The R.I. Board suspended the Respondent's license for five years, all but six weeks suspended so long as the Respondent successfully completed a clinical competency evaluation. (Ex. 2.)

7. As part of the R.I. Board's July 14, 2021 Consent Order, the Respondent admitted to the following findings 8-14. (Ex. 2.)

8. Dr. Brody was the attending physician for Patient A, who was brought to see him by Patient A's grandmother because of concern regarding Patient A's development. Patient A was 2 years, 5 months old at the time of treatment. The chief complaint was identified only as "meeting with grandmother." He listed no past medical history and no family or social history. The record contained no vital signs, no weight, height, head circumference, or growth percentiles. The medical record does not reflect that Dr. Brody examined Patient A. The history of present illness does not include a developmental history. There was no assessment of whether speech milestones were ever obtained and then lost, or simply not attained. The assessment at the end of the visit was simply "slow development. May be related to heavy metal, environmental or other genetic factors." Respondent performed a "provoked urine test" of Patient A, which involved the administration of a chelating agent (used to remove toxic metals from the body) to Patient A prior to collection of Patient A's urine to test for metals. (Ex. 2.)

9. Dr. Brody was the attending physician for Patient B, a minor, who was

brought to Respondent for routine well child care starting at day three of life. Patient B's medical record contained no documentation of vital signs, usual growth assessments such as weight, length, and head circumference. Documentation of Patient B's initial visit does not include an assessment of Patient B's weight, what Patient B is using for nutrition, or whether Patient B's weight or nutrition is adequate. (Ex. 2.)

10. Dr. Brody was the attending physician for Patient C, who was diagnosed with heavy metal toxicity for thallium and lead but was apparently not examined. The documented history is disorganized, and there was no evaluation of whether a possible exposure to lead or thallium may have occurred. (Ex. 2.)

11. Dr. Brody was the attending physician for Patient D. Patient D's medical record did not document physical exams, vital signs, or mental status across several exams. (Ex. 2.)

12. Dr. Brody is trained in psychiatry, not pediatrics, internal medicine, or family medicine. Respondent stated that he tells his patients he is not a primary care provider, but he does not document the disclaimer. Dr. Brody's website states: "I treat most health problems that are commonly seen in a primary care physicians office. As an Integrated Medicine practitioner, I emphasize improved success rates and minimization of risks and dangerous side, through a combination of treatment approaches." (Ex. 2.)

13. Dr. Brody does not do typical physical exams, nor does he routinely order health screening tests such as mammograms, pap smears, or colonoscopies, to achieve early detection of various cancers, unless patients ask for these tests. (Ex. 2.)

14. Dr. Brody took only 1.5 hours of continuing medical education (CME) for the two-year time period from July 1, 2018 through June 30, 2020. This did not fulfill his

minimum requirement. (Ex. 2.)

15. On December 8, 2021, the R.I. Board ratified a third consent order and Dr. Brody surrendered his medical license for failure to comply with the conditions of the previous two consent orders. As part of the third R.I. Board consent order, Dr. Brody admitted that he did not successfully pass his clinical competency evaluation on his first attempt in September of 2021. The R.I. Board's April 14, 2021 consent order provided that his failure to satisfy this requirement "shall result in the suspension of Respondent's license effective January 1, 2022." Dr. Brody had also agreed to complete an additional 80 hours of CME within 12 months of ratification of the R.I. Board's July 14, 2021 Consent Order. (Ex. 3.)

16. Pursuant to the December 8, 2021 R.I. Board consent order, Dr. Brody agreed to refrain from practicing medicine. The Board agreed to reinstate Dr. Brody if, within 12 months of the ratification of the order, he completed all of the coursework, retraining, and testing required in the first and second R.I. Board consent orders. If he failed to complete those requirements in 12 months, he could still reapply after completing the requirements subsequently but only after serving the balance of the stayed 5-year suspension in the second consent order. (Ex. 3.)

17. On September 9, 2022, the Massachusetts Board of Registration in Medicine issued a statement of allegations against Dr. Brody alleging that he was disciplined by the R.I. Board and seeking to discipline him here based on the Rhode Island discipline.

18. In Dr. Brody's response to the Board's motion for summary decision, he admits that he was disciplined by the R.I. Board but disputes its findings and conclusions,

as well as the discipline it imposed.

CONCLUSION AND RECOMMENDATION

I grant the Petitioner Board of Registration in Medicine's motion for summary decision. For the reasons stated below, I conclude that the Board has proven its statement of allegations and recommend that the Board take appropriate action.

Summary decision is appropriate when "there is no genuine issue of fact relating to all or part of a claim" and said claim or part thereof can be decided "as a matter of law," 801 CMR 1.01(7)(h). Summary decision avoids conflict with Massachusetts and Federal Constitutional rights when it "allow[s] the agency to dispense with a hearing only when the papers or pleadings filed conclusively show on their face that the hearing can serve no useful purpose, because a hearing could not affect the decision." *Mass. Outdoor Advertising Council v. Outdoor Advertising Bd.*, 9 Mass. App. Ct. 755, 785-86 (1980).

The Board may discipline a physician because of discipline imposed by another State's licensing authority, provided that the reasons for that discipline are "substantially the same" as those that would subject the physician to discipline in Massachusetts. 243 CMR 1.03(5)(a)(12). When there is no significant difference between another State's reasons for discipline and the grounds for discipline cognizable in Massachusetts, the doctrine of collateral estoppel prevents physicians from relitigating the underlying facts or questions decided against them in the foreign jurisdiction. *Haran v. Bd. of Registration in Med.*, 398 Mass. 571, 575 (1986); *Matter of Meyers*, RM-12-568 (BORIM May 22, 2013). In cases of reciprocal discipline, therefore, the issue is whether another licensing authority has disciplined the physician for reasons substantially similar to those provided under Massachusetts law, not whether the other licensing authority's

findings are correct. *Board of Registration in Med. v. Merchla*, RM-18-0020, Recommended Decision, at \*5 (DALA Aug. 8, 2019) ("The matter before the Division of Administrative Law Appeals is . . . not the underlying facts upon which the other jurisdiction disciplined the licensee, but rather the other Board's decision to discipline and whether the grounds for the discipline are substantially similar to any detailed in G.L. c. 112, § 5 or 243 CMR 1.03(5).").

In the instant case, the parties do not dispute that the Rhode Island Board of Medical Licensure and Discipline disciplined Dr. Brody, who signed a series of consent orders admitting the facts that led to his discipline. In the first Order, issued in April 2021, Dr. Brody admitted that he engaged in unprofessional conduct in violation of R.I. Gen. Laws § 5-37-5.1(19) by sending unsolicited letters to his patients advising them not to receive any of the COVID vaccinations for a variety of reasons that he later admitted were false claims and that revealed his lack of expertise in the field and even a basic understanding of molecular biology. In Rhode Island, unprofessional conduct includes

[i]ncompetent, negligent, or willful misconduct in the practice of medicine, which includes the rendering of medically unnecessary services, and any departure from, or the failure to conform to, the minimal standards of acceptable and prevailing medical practice in his or her area of expertise as is determined by the board.

R.I. Gen. Laws § 5-37-5.1(19). Rhode Island's definition of unprofessional conduct is substantially similar to the Massachusetts Board's discipline for

[c]onduct which places into question the physician's competence to practice medicine, including but not limited to gross misconduct in the practice of medicine, or practicing medicine fraudulently, or beyond its authorized scope, or with gross incompetence, or with gross negligence on a particular occasion or negligence on repeated occasions.



243 CMR 1.03(5)(a)(3). The conduct outlined in the order also amounts to “practicing medicine deceitfully, or engaging in conduct which has the capacity to deceive or defraud” under 243 CMR 1.03(5)(a)(10). Additionally, the Board may discipline a physician for engaging in dishonesty, fraud, or deceit which is reasonably related to the practice of medicine, *see* G.L. c. 112, § 61(5), or undermines the public confidence in the medical profession.

The second consent order, issued in July 2021, suspended Dr. Brody’s license for his treatment of Patients A, B, C, and D and relevant record-keeping; providing primary care without any training in that area; failing to perform complete physical exams of his patients; and failing to complete the continuing medical education required by the Board. The R.I. Board concluded that this conduct also constituted “unprofessional conduct” under R.I. Gen. Laws § 5-37-5.1(19) and R.I. Gen. Laws § 5-37-5.1(24) (unprofessional conduct includes violation of “any provision or provisions of [R.I. Gen. Laws § 5-37] or the rules and regulations of the board or any rules and regulations promulgated by the director of an action, stipulation, or agreement of the board.”). The R.I. Board also requires medical records to be legible, to “contain sufficient information to justify the course of treatment, including, but not limited to: active problem and medication lists; patient histories; examination results; test results; records of drugs prescribed, dispensed, or administered; and reports of consultations and hospitalization.” 216 R.I. Code R. § 40-5-1.5.12(D). Finally, R.I. Board regulations require every licensed physician to complete at least 40 hours of continuing medical education every two years. 216 R.I. Code R. § 40-5-1.5.5(A). The Massachusetts Board can similarly discipline physicians for conduct which places into question the physician’s competence to practice medicine, *see* 243

CMR 1.03(5)(a)(3), and violation of any rule or regulation of the Board, *see* 243 CMR 1.03(5)(a)(11), including failure to "maintain a medical record for each patient that is complete, timely, legible, and adequate to enable the licensee or any other health care provider to provide proper diagnosis and treatment." 243 CMR 2.07(13)(a).

I therefore conclude that the reasons for Dr. Brody's discipline in Rhode Island are substantially the same as those that would subject him to discipline in Massachusetts.

At the status conference that preceded the filing of the parties' cross-motions for summary decision, I informed Dr. Brody that he had a right to a hearing to present mitigating factors to the Board of Registration in Medicine. *See* G.L. c. 112, § 52D; G.L. c. 112, § 61; *Veksler v. Bd. of Registration in Dentistry*, 429 Mass. 650 (1999) (respondent has "right of allocution" to present mitigating factors to the Board). He elected to proceed on written submissions. He has asserted the following. No patient has filed a complaint against him in Rhode Island. In over 30 years of practice, he has had no patient complaints against him in Massachusetts or Rhode Island. Further research has vindicated his opinions of the COVID-19 vaccinations and vaccination program.

Dr. Brody also seeks to collaterally attack the facts that the R.I. Board found, and that Dr. Brody agreed to, in its discipline decision. He explains that he signed the consent orders only because his attorney advised him that "it was not possible to obtain justice in Rhode Island because in matters between the Board and physicians, the judiciary always bowed down to the authority of the Board," and he also wanted to avoid the time, emotions, and cost of fighting the R.I. Board's charges. Nonetheless, an admission is an admission in these circumstances. Moreover, as discussed above, it is the fact itself that he was disciplined in Rhode Island, and not every fact that led to the

discipline, that forms the basis for the Massachusetts Board's statement of allegations. *See Haran v. Bd. of Reg. in Med.*, 398 Mass. 571, 577-80 (1986) (upholding a hearing officer's decision solely upon the evidence of discipline and the legal question whether the regulations, upon which this discipline was based, were substantially similar to Massachusetts regulations; holding that reciprocal discipline is a permissible application of collateral estoppel).

Based on the foregoing, I conclude that there is no genuine issue of fact relating to the Board's Statement of Allegations and, for the reasons stated above, that the Board is entitled to prevail as a matter of law. I therefore recommend that the Board's motion for summary decision be allowed as to Dr. Brody's conduct and that Dr. Brody's cross-motion be denied. The Board should take appropriate action.

SO ORDERED.

DIVISION OF ADMINISTRATIVE LAW APPEALS

/s/ Kenneth J. Forton

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Kenneth J. Forton  
Administrative Magistrate

DATED: MAR 30 2023