

COMMONWEALTH OF MASSACHUSETTS
Division of Administrative Law Appeals

BOARD OF REGISTRATION IN
MEDICINE,
Petitioner,

Docket No. RM-22-0413

v.

SCOTT J. DOWD, M.D.,
Respondent.

Appearance for Petitioner:

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

Appearance for Respondent:

Emilie Grossman, Esq.
Rosen & Goyal, P.C.
204 Andover Street, Suite 402
Andover, MA 01810

SUMMARY OF (RECOMMENDED) DECISION

The Respondent was convicted of several criminal offenses, including aggravated driving while intoxicated and reckless conduct. While some of the details of the offense are in dispute, his convictions are not. Accordingly, the Board is entitled to summary decision. The Respondent's conviction subjects him to discipline under 243 Code Mass. Reg. §§ 1.03(5)(a)(3) and because he engaged in conduct which undermines the public confidence in the integrity of the medical profession. *Raymond v. Bd. of Reg. in Medicine*, 387 Mass. 708 (1982)

RECOMMENDED DECISION ON MOTION FOR SUMMARY DECISION

On September 22, 2022, the Board of Registration in Medicine ("BRM") issued a Statement of Allegations seeking to discipline Scott Dowd, M.D. ("Respondent"). The Respondent filed an answer, admitting some facts but not others. The BRM now moves for summary decision. The Respondent generally concedes that a summary decision is appropriate;

he simply objects to some of BRM's factual assertions. I agree with the BRM that it is entitled to a summary order. But I also agree with the Respondent that only certain facts are not in dispute.

FINDINGS OF FACT

Based on the Respondent's concessions in his answer, and the exhibits submitted by the BRM, I make the following findings of fact:

1. The Respondent is Board-certified in Physical Medicine and Rehabilitation. He has been licensed to practice medicine in Massachusetts since 2014. (Statement of Allegations; Respondent Answer.)
2. On July 10, 2021, at approximately 1:59 p.m., the Respondent drove his motor vehicle while under the influence of alcohol and crashed into a home in Salem, New Hampshire. (Statement of Allegations; Respondent Answer.)
3. His vehicle hit the porch of a home. The Respondent was unconscious after the accident. (Statement of Allegations; Respondent Answer.)
4. An eight-year-old boy was present in the home but uninjured. (Statement of Allegations; Respondent Answer.)
5. A five-year-old girl was also present in the home. She was injured. (Statement of Allegations; Respondent Answer.)
6. At the scene, the Respondent told a paramedic that he had consumed four vodka drinks that day. (Statement of Allegations; Respondent Answer.)
7. The Respondent entered into a Voluntary Agreement Not to Practice, which the BRM ratified on August 5, 2021. (Statement of Allegations; Respondent Answer.)
8. On June 3, 2022, the Respondent pleaded guilty in Rockingham Superior Court in the State of New Hampshire to one count of Aggravated Driving While Intoxicated and three

counts of Reckless Conduct (Deadly Weapon).¹ (Statement of Allegations; Respondent Answer.)

9. The Respondent was sentenced as follows:

- Count 1: Aggravated Driving While Intoxicated: 2 – 5 years in state prison, a \$1,000 fine, and a two-year revocation of his driver's license;
- Count 2: Reckless Conduct (Deadly Weapon): 1 ½ - 3 years in state prison, to be served after count 1;
- Count 3: Reckless Conduct (Deadly Weapon): 2 ½ - 5 years in state prison, suspended for 10 years;
- Count 4: Reckless Conduct (Deadly Weapon): 2 ½ - 5 years in state prison, suspended for 10 years and concurrent with count 3.

(Statement of Allegations; Respondent Answer.)

10. The BRM also refers to some specific facts about the incident that it takes from the police report. The Respondent, in his answer, denies these additional facts. With a few exceptions, because this is a motion for summary decision and there was no evidentiary hearing, his denial creates a dispute of fact. I cannot, therefore, find these facts in favor of the BRM at this stage.

11. The exceptions are as follows. The indictments list specific factual allegations. Because the Respondent plead guilty to the indictments, he admitted these facts.

12. Thus, I also find that the Respondent caused serious bodily injury to the five-year-old girl, to wit, a broken jaw, lacerated vein in her neck, torn muscle, and/or deep forehead lacerations. (BRM Exhibit 2-Indictment 1885718C.)

13. The Respondent drove at a high rate of speed and nearly struck J.W., who was walking by the side of the road with her children. (BRM Exhibit 2-Indictment 1885719C.)

¹ One additional count of First Degree Assault was dismissed (*nolle prosequi*). (BRM Exhibit 3.)

14. While driving, he almost struck another vehicle head on. (BRM Exhibit 2-Indictment 1885720C.)
15. The Respondent crashed into a granite mailbox post and caused the post to be projected into the interior of a house. (BRM Exhibit 2-Indictment 1885721C.)

DISCUSSION

In its Statement of Allegations, the BRM sought relief under three specific grounds: 1) the Respondent was convicted of a criminal offense, 243 Code Mass. Regs. § 1.03(5)(a)(7); 2) the Respondent's conduct placed into question his competence to practice medicine, 243 Code Mass. Regs. § 1.03(5)(a)(3); and 3) the Respondent lacks good moral character and engaged in conduct which undermines the public confidence in the integrity of the medical profession. *Raymond v. Bd. of Reg. in Medicine*, 387 Mass. 708 (1982). In its motion for summary decision, the BRM advances two more grounds for discipline: 1) the Respondent practiced medicine deceitfully, 243 Code Mass. Regs. § 1.03(5)(a)(10) and 2) the Respondent committed misconduct in the practice of medicine. 243 Code Mass. Regs. § 1.03(5)(a)(18).²

The Respondent is undoubtedly subject to discipline for his criminal conviction. *See* 243 Code Mass. Regs. § 1.03(5)(a)(7). In addition, his conviction undermines the public's confidence in the integrity of the medical profession, and he subject to discipline for that too. *See Raymond, supra; In re Diggins, M.D.*, BRM 2021-021 (June 2, 2022).

As a technical matter, I do not find that the undisputed facts support discipline for the other grounds the BRM advances. *See* 243 Code Mass. Regs. §§ 1.03(5)(a)(3) & (10) & (18). Discipline, in those situations, normally follows because the licensee's conduct overlapped with

² It is not clear that the BRM can add additional grounds of discipline which it did not include in the Statement of Allegations. Regardless, I find they are not supported in this case. *See infra*.

their practice of medicine. *See, e.g., In re Melgen*, BRM 2018-12 (Dec. 19, 2019) (discipline for practicing medicine deceitfully and misconduct in practice of medicine for convictions for health care fraud, making fraudulent claims, and making false statements relating to healthcare); *In re Cowan*, BRM 2018-0018 (June 10, 2019) (discipline for practicing medicine deceitfully for “allowing an unlicensed person to prescribe controlled substances on his behalf, billing insurance companies for services he did not provide, authorizing prescriptions for controlled substances without first conducting a medical evaluation, and failing to record patients’ medical information.”); *In re Pike*, BRM 1995-0993 (Jan 16, 1998) (discipline for misconduct in practice of medicine in filing false Medicaid claims and of prescribing controlled substances without a proper medical purpose.). Here, the undisputed facts show the Respondent’s conduct occurred in his personal capacity, totally unrelated to the practice of medicine. In any event, there are sufficient grounds to otherwise discipline the Respondent.

CONCLUSION

Based on the foregoing, the Board’s motion for summary decision is allowed. The Board may impose such discipline on Dr. Dowd as it deems appropriate in light of the facts and conclusions of law that can be drawn from his answer to the statement of allegations and details in the criminal indictments.

DIVISION OF ADMINISTRATIVE LAW APPEALS

Eric Tennen

JAN 26 2023

Eric Tennen
Administrative Magistrate