

COMMONWEALTH OF MASSACHUSETTS

Suffolk, ss.

Division of Administrative Law Appeals

Board of Registration in Medicine,
Petitioner

v.

Docket No. RM-13-486
BORM Case No. 2013-047

Stephen Friedman, M.D.,
Respondent

Appearance for Petitioner:

Gloria Brooks, Esq.
Complaint Counsel
Board of Registration in Medicine
200 Harvard Mill Square, Suite 330
Wakefield, MA 01880

Appearance for Respondent:

Paul Cirel, Esq.
Collora LLP
100 High Street, 20th Floor
Boston, MA 02110-2321

Administrative Magistrate:

Kenneth J. Forton, Esq.

RECOMMENDED DECISION

On September 25, 2013, the Petitioner, Board of Registration in Medicine, issued a Statement of Allegations ordering the Respondent, Stephen Friedman, M.D., to show cause why he should not be disciplined for having been disciplined in another jurisdiction in any way 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). On that same date, the Board referred the matter to the Division of Administrative Law Appeals.

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After last minute notice to DALA and the Board, Respondent did not appear for a scheduled pre-hearing conference. As this is a reciprocal discipline case and the Respondent had not filed an Answer within the required 21 days, I first ordered that he answer the statement of allegations and then that he set forth any disputed issues of material fact that require a hearing. He responded promptly with his Answer admitting the entirety of the Statement of Allegations. Also, citing *Veksler v. Board of Registration in Dentistry*, 429 Mass. 650 (1999), and despite admitting all of the allegations, he argued that a hearing was necessary to present mitigating factors for the Board to consider in its ultimate discipline decision.

A hearing was scheduled for January 23, 2014. In their joint pre-hearing memorandum, which was submitted on January 16, 2014, the parties informed DALA that they were electing to waive a hearing and submit the case upon written submissions, pursuant to 801 CMR 1.01(10)(c).

The joint pre-hearing memorandum included proposed exhibits; I have marked it "A" for identification. On February 6, 2014, Petitioner filed a motion for summary decision, which I have marked as "B" for identification. On February 7, 2014, the Respondent filed two additional documents attesting to his character, which I have admitted into evidence, as described below.

From the documents submitted by the parties, I have admitted the following exhibits into evidence:

1. Statement of Allegations and Order of Reference to DALA, dated September 25, 2013;

2. Respondent's Answer to Statement of Allegations, dated November 6, 2013;
 3. Board's Final Decision and Order in Docket No. RM-09-521 and Adjudicatory Case No. 2009-023, dated January 18, 2012;
 4. Settlement Agreement between Respondent and the New Hampshire Board of Medicine, dated November 9, 2012;
 5. Letter from Petitioner to Dr. Friedman, dated November 8, 2012;
 6. Letter from Attorney Ingrid Martin, on behalf of Dr. Friedman, to Petitioner, dated December 6, 2012;
 7. Affidavit of John Arcuri, M.D., undated; and
 8. Letter from Stephan Gaehde, M.D., dated January 31, 2014.
- The administrative record closed on February 7, 2014.

FINDINGS OF FACT

Based on the evidence in the administrative record, I make the following findings of fact:

1. Stephen Friedman was born in 1961. He is a 1995 graduate of the Boston University School of Medicine. (Ex. 1; Stipulation.)
2. He is certified by the American Board of Emergency Medicine. (Ex. 1; Stipulation.)
3. He was licensed to practice Medicine in Massachusetts in 1998 under certificate number 155751. (Ex. 1; Stipulation.)
4. On January 13, 2012, the Respondent was reprimanded by the Massachusetts Board for engaging in conduct that undermines the public confidence in

the integrity of the medical profession after he improperly disposed of a 5 ml syringe of Fentanyl in a file cabinet drawer. (Exs. 1, 3; Stipulation.)

5. Dr. Friedman was licensed to practice medicine in New Hampshire. He received his license on February 1, 2012. (Stipulation.)

6. When Dr. Friedman applied for his New Hampshire license, he failed to notify the New Hampshire Board that the Massachusetts Board had reprimanded him for the improper Fentanyl disposal. (Ex. 4.)

7. Pursuant to a settlement agreement, signed by the Respondent on September 27, 2012, by his attorney on October 1, 2012, and by the New Hampshire Board of Medicine on November 9, 2012, the Respondent agreed to the permanent voluntary surrender of his license to practice medicine in the State of New Hampshire. (Exs. 1, 4; Stipulation.)

8. The settlement agreement is Exhibit 4. The New Hampshire discipline stems from Dr. Friedman's failure to notify the New Hampshire Board of the Massachusetts Board reprimand for the improper Fentanyl disposal, when he applied for his New Hampshire license. (Ex. 4.)

9. By letter dated November 8, 2012, in connection with Dr. Friedman's Massachusetts license renewal, the Massachusetts Board requested more information from him regarding the New Hampshire Board's disciplinary actions. (Ex. 5.)

10. By letter dated December 6, 2012, Attorney Ingrid Martin responded to the Board on behalf of the Respondent. She explained:

As Dr. Friedman disclosed in his renewal application, in 2011 he applied for licensure in New Hampshire. At the time Dr. Friedman submitted his licensing application to New Hampshire, he had signed a stipulation which was awaiting approval by the Massachusetts Board of Registration in

Medicine. Dr. Friedman did not disclose the pending stipulation as an open "investigation" in his New Hampshire application.

The stipulation with the Massachusetts Board involved Dr. Friedman's failure to properly dispose of a 5 ml syringe of Fentanyl. The stipulation was ultimately [approved] by the Massachusetts Board on January 18, 2012, which imposed a reprimand. When the New Hampshire Board learned about the Massachusetts matter, it reviewed Dr. Friedman's licensing application and determined that the pending stipulation should have been disclosed. When the New Hampshire Board contacted Dr. Friedman about this issue, it ultimately was agreed that Dr. Friedman would voluntarily surrender his New Hampshire license, thereby resolving the matter. Dr. Friedman does not practice in New Hampshire, and he does not need a New Hampshire license for any of his current duties. He applied for licensure in New Hampshire only as an option for per diem work.

(Ex. 6.)

11. John Arcuri, M.D., submitted an undated Affidavit on Dr. Friedman's behalf. He attests to the following:

1. I am currently the chief of the Emergency Department at St. Anne's Hospital in Fall River, Massachusetts. I am also the President of the Hospital's Medical Staff and the former Chair of the Credentials Committee.
2. I understand that this affidavit is being submitted for consideration in a Board of Registration in Medicine proceeding against Dr. Stephen Friedman.
3. I have known Dr. Friedman since May 2013 when he came to work at St. Anne's Emergency Department.
4. Prior to beginning his employment here, Dr. Friedman disclosed to the credentialing committee his prior Reprimand by the Massachusetts Board and the circumstances under which he surrendered his New Hampshire license. Dr. Friedman's disclosure was consistent with the documents attached to this affidavit.¹

¹ The documents are attached to Exhibit 7. They are the Massachusetts Board's January 18, 2012 Final Decision & Order; the December 6, 2012 letter from Attorney Ingrid Martin to the Board; and the New Hampshire Board settlement agreement. (Ex. 7.)

5. Since he began work here I have found Dr. Friedman to be a hard-working and dedicated physician. As his direct supervisor I can also attest that he works well with his colleagues and staff, and I consider Dr. Friedman to be a valued member of our Emergency Department.

6. Based on my own experience with both Dr. Friedman and the other members of the Emergency Department and its staff, it is my opinion that Dr. Friedman enjoys a reputation as a straightforward and trustworthy physician.

(Ex. 7.)

12. Stephan Gaehde, M.D., submitted a letter, dated January 31, 2014, on the Respondent's behalf. It is not signed under the pains and penalties of perjury. Dr.

Gaehde writes:

Dr. Stephen Friedman was on our staff as an attending with privileges in Emergency Medicine at the Boston VA Healthcare System from July 10, 2008 to December 21, 2012. At the time we interviewed him he immediately disclosed to (*sic*) that there was an ongoing investigation by the Massachusetts Board of Registration in Medicine regarding an incident at another hospital. Our subsequent routine query to the BORM was negative but we were fully informed of the investigation by Dr. Friedman at the time of his hire. He was very forthright and frank in his description of the events which subsequently were made public by the Massachusetts BORM.

I was his immediate supervisor as Chief of Emergency Services and worked with him closely with him (*sic*) both clinically and on administrative projects. Dr. Friedman consistently provided outstanding care to our patients. He worked well with both his colleagues and nursing staff and was highly respected. His behavior at the Boston VA Healthcare system was always honest and forthright and he conducted himself with a great deal of integrity.

(Ex. 8.)

CONCLUSION AND RECOMMENDATION

The Board has moved for summary decision pursuant to 801 CMR 1.01(7)(h) because, it argues, there is no genuine issue of fact relating to a claim or defense and the Board is entitled to prevail as a matter of law. I recommend that the Board's motion be

allowed but leave to the Board's discretion the decision on which discipline, if any, to impose on Dr. Friedman.

The Board seeks to discipline Dr. Friedman pursuant to 243 CMR 1.03(5)(a)(12), which grants the Board of Registration in Medicine the authority to discipline a physician who "has been disciplined in another jurisdiction in any way by the proper licensing authority for reasons substantially the same as those set forth in M.G.L. c. 112, § 5 or 243 CMR 1.03(5)." For the Board to discipline Dr. Friedman pursuant to this regulation, he would have had to engage in conduct which is proscribed in another jurisdiction and also in Massachusetts.

Dr. Friedman has admitted to each of the allegations in the Board's Statement of Allegations. In January 2012, he was reprimanded by the Massachusetts Board for improperly disposing of a 5 ml syringe of Fentanyl. He then failed to report to the New Hampshire Board of Medicine that he had been disciplined by the Massachusetts Board before he was granted a license to practice in New Hampshire. The New Hampshire Board then conducted an investigation into the failure to report the Massachusetts discipline. Pursuant to a settlement agreement, finalized on November 9, 2012 and admitted as Exhibit 4 in this appeal, Dr. Friedman agreed to the permanent voluntary surrender of his New Hampshire license. Some time prior to November 8, 2012, he filed a license renewal application with the Massachusetts Board, informing the Board of the disciplinary action in New Hampshire; the Massachusetts Board requested details on the New Hampshire Board's disciplinary actions. By letter of December 6, 2012, Dr. Friedman's attorney explained the circumstances of the New Hampshire discipline.

The New Hampshire Board's reasons for disciplining Dr. Friedman are substantially similar to the conduct prohibited by 243 CMR 1.03(5)(a)(15), which provides:

Failure to report to the Board, within the time period provided by law or regulation, any disciplinary action taken against the licensee by another licensing jurisdiction (United States or foreign), by any health care institution, by any professional or medical society or association, by any governmental agency, by any law enforcement agency, or by any court for acts or conduct substantially the same as acts or conduct which would constitute grounds for complaint as defined in 243 CMR 1.03(5).

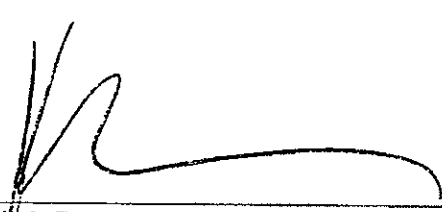
His conduct is also arguably substantially similar to the conduct prohibited by 243 CMR 1.03(5)(a)(1), which proscribes "[f]raudulent procurement of his or her certificate of registration or its renewal," and, although it appears largely redundant, to the conduct prohibited by 243 CMR 1.03(5)(a)(11), violation of any rule or regulation of the Board.

It is possible to argue that Dr. Friedman's surrender of his New Hampshire license did not constitute discipline from the New Hampshire Board, as it did not formally discipline him. This, however, would be a specious argument because paragraph six of the settlement agreement provides that "Respondent understands that the license surrender will be reported as discipline." Moreover, it stretches credulity to think of a physician surrendering his license under a cloud of allegations as not constituting discipline.

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. Friedman's conduct.

I leave to the Board's discretion what discipline, if any, to impose on Dr. Friedman, taking into account the circumstances described in this decision and the affidavit and letter that the Respondent submitted.

DIVISION OF ADMINISTRATIVE LAW APPEALS



Kenneth J. Forton
Administrative Magistrate

DATED: JUN 10 2014