

COMMONWEALTH OF MASSACHUSETTS

Middlesex, ss.

Division of Administrative Law Appeals

Board of Registration in Medicine,
Petitioner

v.

Docket No. RM-20-0616

Leonardo Riella, M.D.,
Respondent

Appearance for Petitioner:

Stephen C. Hctor, Esq.
Board of Registration in Medicine
178 Albion Street, Suite 330
Wakefield, MA 01880

Appearance for Respondent:

Jennifer Boyd Herlihy, Esq.
Adler, Cohen, Harvey, Wakeman, Guekguezian, LLP
75 Federal Street, 10th Floor
Boston, MA 02110

Administrative Magistrate:

Kenneth J. Forton

SUMMARY OF DECISION

The Board of Registration in Medicine proved by a preponderance of the evidence that Dr. Riella committed misconduct in the practice of medicine, engaged in conduct that undermines the public confidence in the integrity of the medical profession, and lacked good moral character when he accessed Patient A's electronic medical record to gain an advantage against Patient A in a lawsuit that he brought against Patient A and her elderly mother. Therefore, I recommend that the Board impose the discipline it believes is appropriate.

DECISION

On November 20, 2020, Petitioner Board of Registration in Medicine issued a Statement of Allegations ordering Respondent Dr. Leonardo Riella to show cause why he should not be disciplined for committing misconduct in the practice of medicine, lacking good moral character, and engaging in conduct that undermines the public confidence in the integrity of the medical profession. On the same date, the Board issued orders to use pseudonyms and to impound, and referred the matter to the Division of Administrative Law Appeals. On December 14, 2020, Dr. Riella answered the Statement of Allegations.

On July 29, 2021, the parties submitted a joint pre-hearing conference memorandum, which I marked "A" for identification. I held a hearing on August 10, 2021 at the Division of Administrative Law Appeals, 14 Summer Street, 4th Floor, Malden, MA 02148. The hearing was stenographically recorded.¹ I entered seven exhibits into evidence. (Exhibits 1, 4, 8, 10, 14, 15, and 16.)² The Board called four witnesses: Patient A; Jacklyn Raymond, Enterprise Director for Health Information Management of Mass. General Brigham; Tia Clayton, Privacy Specialist for Brigham and Women's Hospital; and Joseph Bonventre, M.D., physician, scientist and Chief of the Division of Renal Medicine and Chief of Engineering and Medicine at Brigham and Women's Hospital and Harvard Medical School. Dr. Riella testified on his own behalf and also called his wife, Ana Riella, to testify. On December 10, 2021, the Board submitted a post-hearing memorandum, which I marked "B" for identification. Dr. Riella

¹ Citations to the hearing transcript will follow the following format: Tr. [Page Number(s)].

² Proposed exhibits 2, 3, 5, 6, 7, 9, 11, 12, and 13 were excluded from evidence because they were not produced by the Board of Registration in Medicine in discovery, and their admission would have prejudiced the Respondent.

submitted a post-hearing memorandum on December 10, 2021; I marked it "C" for identification. The administrative record closed upon receipt of the parties' post-hearing memoranda.

FINDINGS OF FACT

Based on the testimony and exhibits in evidence, I make the following findings of fact:

1. Leonardo Riella, M.D. is Board-certified in Internal Medicine, with a subspecialty certification in Nephrology, which focuses on the diagnosis and treatment of kidney disease. He is licensed to practice medicine in Massachusetts. He graduated from Federal University of Parana Faculty of Medicine in Brazil in 2003. He moved to Massachusetts in 2004 for his internal medicine residency at Brigham and Women's Hospital (BWH), which he completed in 2007. From 2007 through 2010, Dr. Riella completed a nephrology fellowship at BWH. Afterward, he became faculty at the hospital. He worked at BWH until 2020. (Ex. 1; Tr. 123-24.)

2. Ana Riella is Dr. Riella's wife. They married in 2011. They now have two children. Mrs. Riella was educated in law in Brazil, but she has not practiced law in the United States. (Tr. 125, 134, 149-50, 152, 154.)

3. Dr. Riella and Mrs. Riella were tenants in a house originally owned by Patient A's brother. (Tr. 15.) During their tenancy, Patient A's brother died, and the house was put into a trust. (Tr. 15.) Patient A was the personal representative of the estate, and she and her sister collected rent from the Riellas. (Tr. 15.) Patient A decided to sell the house and told the Riellas that she would not renew their lease, which was then set to expire in June 2014. (Tr. 15-16.)

4. The Riellas learned from their real estate broker that Patient A's mother's house was available for rent, and, after viewing the house, they asked to rent it. (Tr. 16-17.) Patient A drew up a lease, but, after visiting the house again, Mrs. Riella discovered mold in the basement and told Patient A they would not move in until it was removed. (Tr. 17-18.) Mrs. Riella was pregnant and was worried that the mold would affect the child's health. (Tr. 156-57.)

5. In response, Patient A offered to extend the lease on her brother's house for three months while she removed the mold from her mother's house. (Tr. 18-19.) The Riellas accepted Patient A's offer and stayed in her brother's house for two and one-half months, until August 2014, when they informed Patient A that they were moving to a new address in Brookline. (Tr. 19-20.)

6. In September 2015, Patient A's mother received a certified demand letter from the Riellas, stating that they wanted \$22,000 for their inconvenience and other damages (including the difference in rent between the two properties) and would pursue legal action if they did not receive the money within 10 days. Patient A and her mother did not respond to the demand letter. (Tr. 20, 23.)

7. On October 15, 2015, the Riellas filed a lawsuit against Patient A and her elderly mother in the Small Claims Division of the Brookline District Court for \$7,000 in damages related to the move. (Ex. 8.)

8. Patient A is the Vice President of an organization that does research on pharmaceutical drugs and compounds that are in development. She has been a patient at BWH since 2012, when she was first diagnosed with cancer. A doctor performed surgery

and removed a large sarcoma from her leg, and she received 36 radiation treatments. She continues with follow-up care at BWH. (Tr. 12-13.)

9. Dr. Riella has never treated Patient A. Patient A did not have any relationship with the Riellas before they began renting her brother's home. (Tr. 21.)

10. A trial in the Riellas' lawsuit against Patient A and her mother was initially scheduled for February 4, 2016. (Ex. 8.) Patient A requested to continue the trial to February 25, 2016, and the Riellas assented. (Ex. 8.) Patient A and her mother appeared in court on February 25, but the trial was continued to April 21, 2016 because Patient A's elderly mother was too frail to participate. (Ex. 8; Tr. 25.) The Court continued the April 21, 2016 trial to May 12, 2016 due to low staffing. (Ex. 8; Tr. 24.)

11. On May 10, 2016, Patient A requested to continue the May 12, 2016 trial again, this time because she said she had a conflicting appointment with her oncologist, and provided a letter confirming the date of the appointment. (Ex. 8; Tr. 25-26.) Mrs. Riella objected to the continuance, informing the court Patient A's appointment was in the afternoon and thus did not conflict with the morning trial. (Tr. 27.)

12. Patient A wondered how Mrs. Riella knew this information. (Tr. 27.) Patient A asked the Privacy Office at BWH to run an audit on who accessed and viewed her medical record. (Tr. 34.)

13. Tia Clayton, a Privacy Specialist at BWH, ran the audit. (Tr. 35, 75.)

14. The audit revealed that on May 10, 2016, Dr. Riella accessed and viewed Patient A's electronic medical records. (Ex. 14.)

15. On May 13, 2016, the BWH Privacy Office asked Dr. Riella why he accessed Patient A's medical record. Dr. Riella initially falsely claimed that he entered

the wrong medical record number and accessed Patient A's medical records in error. (Ex. 10.)

16. Dr. Riella eventually admitted to accessing Patient A's records to view her appointment calendar. He also admitted to disclosing Patient A's appointment information to his wife. To justify his actions, he claimed that he did not believe that Patient A was acting in good faith when she requested to reschedule the trial date. He also cited his wife's advanced pregnancy as a reason for needing to resolve the lawsuit as soon as possible. (Ex. 5; Tr. 147.)

17. On July 14, 2016, BWH issued a letter of warning to Dr. Riella and ordered that he complete additional training in Health Insurance Portability and Accountability Act (HIPAA) privacy rules. (Ex. 4.)

18. On August 7, 2017, the Riellas dismissed their lawsuit against Patient A and her mother. (Ex. 8.)

19. On November 19, 2020, the Board of Registration in Medicine ordered Dr. Riella to show cause why it should not discipline him for inappropriately accessing Patient A's medical records. (Ex. 1.)

20. On November 20, 2020, the Board referred Dr. Riella's matter to DALA. (Ex. 1.)

CONCLUSION AND ORDER

The Board has proven by a preponderance of the evidence cause to discipline Dr. Riella for inappropriately accessing confidential medical information for his own use and disclosing that information to a third party.

Under 243 CMR 1.03(5)(a)(18), the Board may discipline a physician who has committed misconduct in the practice of medicine. Additionally, the Board may discipline a physician who has engaged in conduct that undermines the public confidence in the integrity of the medical profession. *Raymond v. Board of Registration in Med.*, 387 Mass. 708 (1982); *Levy v. Board of Registration in Med.*, 378 Mass. 519 (1979).

The Board is not limited to disciplining conduct involving direct patient care, criminal activity, or deceit. *In the Matter of Muriel Sugarman, M.D.*, 93-12-DALA (Bd. of Registration in Med. Sept. 1994), *aff'd sub. nom. Sugarman v. Bd. of Registration in Med.*, 422 Mass. 338 (1996). Licensed physicians have many professional responsibilities which attach to the acquisition of a medical degree and the procurement of a license to practice medicine from the Commonwealth, some of which apply regardless of a doctor-patient relationship. *Id.* One of these responsibilities is the obligation to protect confidential information which comes into a physician's hands because of his or her status as a physician. *Id.*

The Board has imposed discipline against physicians like Dr. Riella where the physician breached patient confidentiality by accessing a person's medical records to serve a personal interest. In the case, *In the Matter of Deborah Sichel, M.D.*, Final Decision and Order, Adjudicatory Case No. 02-58-DALA (Bd. of Registration in Med. Sept. 1, 2004),³ the Board imposed a fine of \$2,500 and indefinitely suspended the license of a physician who accessed medical records of nonpatients who had filed

³ The Board adopted the decision of the DALA magistrate, which specifically found that Dr. Sichel engaged in conduct that undermines the public confidence in the integrity of the medical profession. *Bd. of Registration in Med. v. Deborah A. Sichel, M.D.*, RM-02-1440, Recommended Decision (DALA, Apr. 7, 2004).

complaints against her husband. The Board determined that the physician's actions constituted not only a breach of confidentiality, but also an affirmative act to obtain information to which she was not entitled. *Id.* Moreover, the information obtained by the physician was not obtained in the course of her medical practice, nor was it obtained as part of a patient relationship. *Id.* Rather, the information was obtained to serve her interest and that of her husband. *Id.* In justifying the sanction, the Board stated that it considers the privacy of patient medical records to be of the utmost importance, and consequently violations of confidentiality warrant serious sanction. *Id.*

The Board applied its reasoning in *Sichel* to another similar case, *In the Matter of Josephine Scotto DiCarlo, M.D.*, Adjudicatory Case No. 2006-040, Final Decision and Order (Bd. of Registration in Med. Dec. 20, 2006). In *DiCarlo*, the Board imposed a \$2,500 fine and a 30-day license suspension on a physician who accessed the medical record of a nonpatient and then disclosed information from that record to a third party for personal reasons. The Board explained that the physician's conduct constituted misconduct under 243 CMR 1.03(5)(a)(18) and undermined the public's confidence in the integrity of the medical profession because she violated a patient's right to privacy and confidentiality. *Id.*

Misconduct under 243 CMR 1.03(5)(a)(18) is:

improper conduct or wrong behavior, but as used in speech and in law it implies that the conduct complained of was willed and intentional. It is more than that conduct which comes about by reason of error of judgment or lack of diligence. It involves intentional wrongdoing or lack of concern for one's conduct. Whether or not an act constitutes misconduct must be determined from the facts surrounding the act, the nature of the act, and the intention of the actor.

Hellman v. Bd. of Registration in Med., 404 Mass. 800, 804 (1989). A deliberate disclosure of confidential medical records has been held to be misconduct in the practice of medicine and behavior that undermines public confidence in the integrity of the medical profession. *Bd. of Registration in Med. v. Hoang*, RM-05-623, Recommended Decision (DALA, Dec. 12, 2006).

There is ample evidence, including his own admission, that Dr. Riella intentionally used his position as a physician to access Patient A's medical records to obtain information that would serve his personal interest, and then shared that information with his wife. Dr. Riella argues that he did not breach patient confidentiality because he accessed only Patient A's appointment time, which is not confidential information. He cites a HIPAA privacy rule that permits a physician's office to leave information about the date and time of a patient's upcoming appointment with a family member or answering machine. This rule, however, is obviously designed to serve the patient's interests, not the interests of a physician who wants to use appointment times against a nonpatient in a lawsuit. Dr. Riella was not entitled to search Brigham and Women's Hospital's medical records for Patient A's appointment time, and therefore he violated patient privacy and confidentiality. Taking into consideration "the facts surrounding the act, the nature of the act, and the intention of the actor," I conclude that Dr. Riella engaged in misconduct in the practice of medicine.

Dr. Riella's conduct also undermines the public's confidence in the medical profession. The Board has demonstrated that Dr. Riella accessed the medical record of a nonpatient to gain an advantage that he would not otherwise have in a lawsuit against her, and then shared the information from that record with his wife. Mrs. Riella testified that

she already had the appointment time because she called Patient A's doctor's office and asked for it without revealing who she was. Even if I did credit this testimony, which I do not because there is no evidence to corroborate it, accessing Patient A's medical records alone without any healthcare reason would be enough to discipline Dr. Riella. The public will not maintain its confidence in the medical profession if it knows that physicians can access their private medical records without any medical reason for doing so. Confidentiality and patient privacy are intrinsic to the practice of medicine, and thus Dr. Riella's conduct undermines the public's confidence in the medical profession. *See DiCarlo, supra; Sichel, supra.*

Finally, Dr. Riella acted unethically when he accessed Patient A's medical records without any medical reason. He compounded the unethical behavior by at first lying about accessing the records, stating that he must have entered the wrong patient code into the system. Engaging in this conduct evinces a lack of moral character.

Dr. Riella argues that his actions are too minor to undermine the public confidence in the medical profession or to amount to misconduct under 243 CMR 1.03(5)(a)(18). Dr. Riella relies on extreme examples to make his arguments. He cites *Levy, supra*, where a physician pleaded guilty to larceny, and, *Raymond, supra*, where a physician was convicted of owning unregistered automatic submachine guns, as a sort of floor for cases of professional misconduct or conduct that undermines the public's confidence in the medical profession. While Dr. Riella's conduct may not be as extreme as the examples he cites, he still violated patient privacy and confidentiality, which are fundamental to the medical profession.

The Board of Registration in Medicine proved by a preponderance of the evidence that Dr. Riella committed misconduct in the practice of medicine, engaged in conduct that undermines the public confidence in the integrity of the medical profession, and lacked good moral character. Therefore, I recommend that the Board impose the discipline it believes is appropriate.

SO ORDERED.

DIVISION OF ADMINISTRATIVE LAW APPEALS



Kenneth J. Forton, Esq.
Administrative Magistrate

Dated: **FEB -7 2022**