

COMMONWEALTH OF MASSACHUSETTS

Middlesex, ss.

Board of Registration in Medicine

Adjudicatory Case No. 2024-003

In the Matter of)
)
DALE K. WELDON, M.D.)
_____)

STATEMENT OF ALLEGATIONS

The Board of Registration in Medicine (Board) has determined that good cause exists to believe the following acts occurred and constitute violations for which a licensee may be sanctioned by the Board. The Board therefore alleges that Dale K. Weldon, M.D. (Respondent) has practiced medicine in violation of law, regulations, or good and accepted medical practice as set forth herein. The investigative docket numbers associated with this order to show cause are Docket Nos. 20-654, 20-707, and 22-536.

Biographical Information

1. The Respondent graduated from the Emory University School of Medicine in 1985 and has been licensed to practice medicine in Massachusetts under license number 71075 since 1989. She is board-certified in obstetrics and gynecology. She works at Brigham & Women's Hospital, Faulkner Hospital, and is affiliated with Nantucket Cottage Hospital.

Factual Allegations

2. From January 2013 through May 21, 2017, the Respondent owned and operated her own practice, Upper Cape Gynecology.

3. When the Respondent closed her practice, she retained her medical records on an encrypted hard drive from eClinicalWorks, her electronic medical record (EMR) provider.

4. When the Respondent closed her practice, she notified her approximately 2000 patients how to request their medical records.

5. Following the closure of her practice, the Respondent was contacted by a small number of patients who had not previously had their medical records sent to their new providers, and each time the Respondent had been able to access patient records on the encrypted hard drive.

Patient A

6. Patient A requested her medical records from the Respondent via telephone and through her new providers.

7. In April 2019, Patient A filed a complaint with the Board when the Respondent failed to produce her medical records.

Patient B

8. Patient B requested her medical records from the Respondent via telephone, mail fax, and through her new providers.

9. In April 2019, Patient B filed a complaint with the Board when the Respondent failed to produce her medical records.

Board Requests for Information

10. The Board notified the Respondent of Patient A's complaint via certified mail on October 16, 2020 and requested a response within thirty days.

11. The Board notified the Respondent of Patient B's complaint via certified mail on October 26, 2020 and requested a response within thirty days.

12. The Board emailed the Respondent Patient A's and Patient B's complaints on February 23, 2022.

13. On October 18, 2022, the Complaint Committee issued a Ten-Day Order for the Respondent to submit a response to the two complaints within ten days of the order.

14. On October 18, 2022, the Ten-Day Order was sent to the Respondent via email and certified mail.

15. The Respondent failed to submit a response and the Board docketed another complaint on November 10, 2022.

Respondent's Efforts to Access Records

16. In October 2020, the Respondent attempted to access Patient A's and Patient B's medical records on the encrypted hard drive from eClinicalWorks but was no longer able to open any of the files.

17. Consequently, the Respondent contacted eClinicalWorks for assistance but was unable to obtain assistance from the company with the encrypted hard drive that they had provided to her.

18. In February 2022 and November 2022, the Respondent again attempted to access Patient A's and Patient B's medical records on the encrypted hard drive from eClinicalWorks and sought assistance with the same from eClinicalWorks.

19. The Respondent subsequently worked with the IT department at her new practice and with an independent IT specialist to access the records on the encrypted hard drive. These attempts were unsuccessful.

20. On or about October 5, 2023, the Respondent contacted eClinicalWorks again and offered to pay for the practice records for a second time in order to access Patient A's and Patient B's records. However, the Respondent was informed by eClinicalWorks that the back-up copies of the practice records had been deleted by eClinicalWorks and were unretrievable.

Legal Basis for Proposed Relief

A. Pursuant to G.L. c. 112, §5, eighth par. (h) and 243 CMR 1.03(5)(a)11, the Board may discipline a physician upon proof satisfactory to a majority of the Board, that said physician has violated a rule or regulation of the Board. Specifically:

- a. 243 CMR 2.07(12), which requires a physician to respond to a written communication from the Board within thirty days;
- b. 243 CMR 1.03(7), which requires a physician to respond within ten days to an Order for Answering issued by the Complaint Committee;
- c. 243 CMR 2.07(13)(b), which requires that, upon a patient request, a physician provide a copy of the patient's medical record to a patient, other licensee or other specifically authorized person, in a timely manner.

B. Pursuant to 243 C.M.R. 1.03(5)(a)16 the Board may discipline a physician upon proof satisfactory to a majority of the Board that said physician failed to respond to a subpoena, or furnish the Board, its investigators or representatives, documents, information or testimony to which the Board is legally entitled.

C. Pursuant to Levy v. Board of Registration in Medicine, 378 Mass. 519 (1979); Raymond v. Board of Registration in Medicine, 387 Mass. 708 (1982), and Sugarman v. Board of Registration in Medicine, 422 Mass. 338 (1996) the Board may discipline a physician upon proof satisfactory to a majority of the Board that said physician lacks good moral character and has engaged in conduct that undermines the public confidence in the integrity of the medical profession.

The Board has jurisdiction over this matter pursuant to G.L. c. 112, §§ 5, 61 and 62. This adjudicatory proceeding will be conducted in accordance with the provisions of G.L. c. 30A and 801 CMR 1.01.

Nature of Relief Sought

The Board is authorized and empowered to order appropriate disciplinary action, which may include revocation or suspension of the Respondent's license to practice medicine. The Board may also order, in addition to or instead of revocation or suspension, one or more of the following: admonishment, censure, reprimand, fine, the performance of uncompensated public service, a course of education or training, or other restrictions upon the Respondent's practice of medicine.

Order

Wherefore, it is hereby **ORDERED** that the Respondent show cause why the Board should not discipline the Respondent for the conduct described herein.

By the Board of Registration in Medicine,



Booker T. Bush, M.D.
Acting Chair

Date: January 25, 2024