COMMONWEALTH OF MASSACHUSETTS

Suffolk, ss. Division of Administrative Law Appeals

 Docket No. RM-18-0411

 )

Board of Registration in Medicine, )

 Petitioner, )

v. )

 )

Donald Berman, M.D., )

 Respondent. )

 )

STIPULATION

Donald Berman, M.D. (Respondent), counsel for the Respondent, and Complaint Counsel agree that this stipulation shall be filed with the Administrative Magistrate for the Division of Administrative Law Appeals (DALA) as a resolution of questions of material fact and law as set forth by the Statement of Allegations in the above-captioned matter. Execution of this stipulation does not constitute an admission or denial of any allegations set forth in the Statement of Allegations. The Respondent admits to the Stipulated Facts described below and agrees that the Administrative Magistrate and the Board of Registration in Medicine (Board) may make the Conclusions of Law as set forth below.

BACKGROUND

1. The Respondent is a 1978 graduate of the State University of New York, Upstate Medical University, and he has been licensed to practice medicine in Massachusetts since June 23, 1980 under certificate number 45965.
2. The Respondent has been licensed to practice medicine in ten (10) other jurisdictions at various times. Some of those licenses are active and some have lapsed. According to the Federation of State Medical Boards (FSMB), the medical boards in Connecticut (active) and Pennsylvania (active) have imposed discipline on the Respondent’s licenses based upon informal disciplinary action taken against the Respondent’s license in Washington.

STIPULATED FACTS

1. On December 20, 2017, the Board of Registration in Medicine (“BORIM”) received notification from the FSMB that the State of Connecticut Department of Public Health Healthcare Quality and Safety Branch (Connecticut Board) imposed discipline on the Respondent’s license in Connecticut as a result of a Stipulation of Informal Discipline that Dr. Berman entered into with the State of Washington with respect to the Respondent’s license in that state.
2. The Washington Board placed conditions on the Respondent’s license due to his failure to obtain the consent of two female patients before performing a breast examination, his failure to communicate his intention to perform said breast examinations, and his failure to offer those patients a chaperone prior to the examinations. The Washington Board Order is attached as Exhibit 1 and incorporated herein by reference.
3. Based on the Washington Board’s decision, the Connecticut Board of Medicine reprimanded the Respondent’s license to practice medicine in Connecticut, and the Pennsylvania Board of Medicine assessed a civil penalty against the Respondent’s license to practice medicine in Pennsylvania.

CONCLUSIONS OF LAW

1. The Respondent has violated 243 CMR 1.03(5)(a)12, by having 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). More specifically, the Respondent has:
2. engaged in conduct that places into question the Respondent's competence to practice medicine in violation of 243 C.M.R. 1.03(a)(5)3;
3. committed misconduct in the practice of medicine in violation of 243 C.M.R. 1.03(a)(5)18.
4. The Respondent has engaged in conduct that undermines the public confidence in the integrity of the medical profession. *See Levy v. Board of Registration in Medicine,* 378 Mass. 519 (1979); *Raymond v. Board of Registration in Medicine,* 387 Mass. 708 (1982).

SANCTIONS

The Respondent, the Respondent’s attorney, and Complaint Counsel expressly acknowledge that the Board may impose sanctions against the Respondent based on the above Stipulated Facts and Conclusions of Law. The Respondent, the Respondent’s attorney, and Complaint Counsel jointly agree to recommend to the Board that it impose as a sanction a reprimand. The parties hereto understand that the Recommended Sanction is not binding on the Board, and that the Board may impose a different sanction on the Respondent.

At the time the Board considers this Stipulation, it will inform the parties of its inclination as to sanction. If the Board’s sanction differs from the one recommended by the parties, the Respondent will be given an opportunity to either accept or reject the proposed sanction. If the Respondent rejects the proposed sanction, the Respondent will be given the opportunity to proceed to a hearing on the merits in accordance with the adjudicatory process as provided in General Laws chapter 30A and 801 CMR 1.00 et seq.

EXECUTION OF THIS STIPULATION

It is agreed that the approval of this Stipulation is left to the discretion of the Administrative Magistrate and the Board. As to any matter this Stipulation leaves to the discretion of the Administrative Magistrate or the Board, neither the Respondent, nor anyone else acting on his behalf has received any promises or representations regarding the same.

The signature of the Respondent, his attorney, and Complaint Counsel are expressly conditioned on the Administrative Magistrate and the Board accepting this Stipulation.

If the Administrative Magistrate rejects any provision contained in this Stipulation, the entire document shall be null and void and the matter will be scheduled for a hearing pursuant to General Laws c. 30A and 801 CMR 1.00 et seq.

If the Board rejects any provision in this Stipulation, the entire document shall be null and void and the matter will be recommitted to DALA for a hearing pursuant to General Laws c. 30A and 801 CMR 1.00 et seq.

Neither of the parties nor anyone else may rely on the Stipulation in these proceedings or in any appeal therefrom.

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| Signed by Donald Berman, M.D.Donald Berman, M.D.Respondent | \_12/7/2022\_\_\_\_\_\_\_\_\_\_\_\_Date |
| Signed by Megan Grew Pimentel, Esq.Megan Grew Pimentel, Esq.Attorney for Respondent | \_1/8/22\_\_\_\_\_\_\_\_\_\_\_\_Date |
| \_Signed by Erik R. Bennett, Esq.Erik R. Bennett, Esq.Complaint Counsel | 01-09-2023\_\_\_\_\_\_\_\_\_\_\_\_\_Date |

The PDF version of this Stipulation includes a copy of a Washington state Medical Board order as an attachment that is not included in this Word version.  If you cannot view the PDF or otherwise need assistance to obtain the content of the Washington state Medical Board, please contact the Call Center at (781) 876-8230 or email at borim.info@state.ma.us.