

COMMONWEALTH OF MASSACHUSETTS

Middlesex, SS.

Board of Registration in Medicine
Adjudicatory Case No. 2020-043

In the Matter of)
NEIL E. TOBACK, M.D.)
_____)

CONSENT ORDER

Pursuant to G.L. c. 30A, § 10, Neil E. Toback, M.D. (Respondent) and the Board of Registration in Medicine (Board) (hereinafter referred to jointly as the "Parties") agree the Board may issue this Consent Order to resolve the above-captioned adjudicatory proceeding. The Parties further agree this Consent Order will have all the force and effect of a Final Decision within the meaning of 801 CMR 1.01(11)(d). The Respondent admits to the findings of fact specified below and agrees the Board may make the conclusions of law and impose the sanction set forth below in resolution of investigative Docket No. 20-099.

Findings of Fact

1. The Respondent was born on January 12, 1941. He graduated from Universite Catholique de Louvain in Belgium in 1969 and his current practice specialty is dermatology. The Respondent was licensed to practice medicine in Massachusetts under certificate number 35708 beginning on July 23, 1973 and until January 12, 2005. He is currently licensed to practice medicine in Rhode Island and was previously licensed in Maine, New York, and Pennsylvania.

2. On August 14, 2019 the Rhode Island Board of Medical Licensure and Discipline (State of Rhode Island) disciplined the Respondent when it accepted the Respondent's Consent

Order (Rhode Island Consent Order). In the Rhode Island Consent Order, the Respondent stipulated the State of Rhode Island had the authority to discipline him under R.I. Gen. Laws § 5-37-5.1(24); R.I. Gen. Laws § 5-37-2.1; and R.I. Gen. Laws § 5-37-5.1. R.I. Gen. Laws § 5-37-5.1(24) defines “unprofessional conduct” as “[v]iolating any provision or provisions...chapter [5-37 of the Rhode Island General Laws] or the rules and regulations of the [Board] or any rules and regulations promulgated by the [Director] or of any action, stipulation, or agreement of the [Board].”

3. In the Rhode Island Consent Order, the Respondent stipulated he engaged in the practice of medicine without a current license between July 1, 2018 and August 28, 2018 and failed to complete continuing medical education (CME) requirements for two renewal periods between July 1, 2014 and June 30, 2018 after asserting he had in his 2014 and 2016 license renewal applications. The Respondent stipulated that, if true, said allegations would subject him to discipline. The Rhode Island Consent Order is attached hereto as Attachment A and incorporated herein by reference.

Conclusion of Law

A. The Respondent has violated 243 CMR 1.03(5)(a)12 in that he has been disciplined in another jurisdiction 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), specifically:

1. The Respondent 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).

2. The Respondent continued to practice while his registration was lapsed, suspended, or revoked. *See* 243 CMR 1.03(5)(a)(8).
3. The Respondent fraudulently procured his certificate of registration or its renewal. *See* 243 CMR 1.03(5)(a)(1).

Sanction and Order

The Respondent's license is hereby Reprimanded. This sanction is imposed for each violation of law listed in the Conclusion section and not a combination of any or all of them.

Execution of this Consent Order

Complaint Counsel, the Respondent, and the Respondent's counsel agree that the approval of this Consent Order is left to the discretion of the Board. The signature of Complaint Counsel, the Respondent, and the Respondent's counsel are expressly conditioned on the Board accepting this Consent Order. If the Board rejects this Consent Order, in whole or in part, then the entire document shall be null and void; thereafter, neither of the parties nor anyone else may rely on these stipulations in this proceeding.



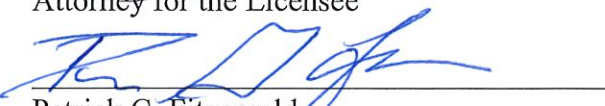
As to any matter in this Consent Order left to the discretion of the Board, neither the Respondent, nor anyone acting on his behalf, has received any promises or representations regarding the same.

The Respondent waives any right of appeal that he may have resulting from the Board's acceptance of this Consent Order.

The Respondent shall provide a complete copy of this Consent Order with all exhibits and attachments within ten (10) days by certified mail, return receipt requested, or by hand delivery to the following designated entities: any in- or out-of-state hospital, nursing home, clinic, other licensed facility, or municipal, state, or federal facility at which the Respondent


practices medicine; any in- or out-of-state health maintenance organization with whom the Respondent has privileges or any other kind of association; any state agency, in- or out-of-state, with which the Respondent has a provider contract; any in- or out-of-state medical employer, whether or not the Respondent practices medicine there; the state licensing boards of all states in which the Respondent has any kind of license to practice medicine; the Drug Enforcement Administration Boston Diversion Group; and the Massachusetts Department of Public Health Drug Control Program. The Respondent shall also provide this notification to any such designated entities with which the Respondent becomes associated in the year following the date of imposition of this reprimand. The Respondent is further directed to certify to the Board within ten (10) days that he has complied with this directive.

The Board expressly reserves the authority to independently notify, at any time, any of the entities designated above, or any other affected entity, of any action it has taken.

 _____ Neil E. Toback, M.D. Licensee	<u>6-24-2020</u> _____ Date
 _____ William Lynch Attorney for the Licensee	<u>7/10/2020</u> _____ Date
 _____ Patrick G. Fitzgerald Complaint Counsel	<u>7/20/2020</u> _____ Date

MASSACHUSETTS DEPARTMENT OF PUBLIC HEALTH
OFFICE OF THE STATE REGISTRAR
RECEIVED

So ORDERED by the Board of Registration in Medicine this 8th day of October, 2020.



George Abraham, M.D.
Board Chair

Rhode Island Consent Order



IN THE MATTER OF:
Neil Toback, MD
License #: MD 04272
Case #: CI8-1115

CONSENT ORDER

Neil Toback, MD ("Respondent") is licensed as a physician in Rhode Island. The Rhode Island Department of Health ("RIDOH") Board of Medical Licensure and Discipline ("Board") makes the following

FINDINGS OF FACT

1. Respondent has been a licensed physician in the State of Rhode Island since January 27, 1971. Respondent is a June 1, 1969 graduate of Catholic University of Louvain, in Belgium.
2. The Board initiated a complaint against Respondent on the grounds that, between July 1, 2018 and August 28, 2018, Respondent had engaged in the practice of medicine in Rhode Island without a license.
3. Licenses to practice medicine in Rhode Island must be renewed every other year. Renewal is conditioned upon submission to the Board, on or before June 1 of every even year, an application, executed together with a registration form and renewal fee. The renewal period—the period during which the renewed license will be in effect—ranges from July 1 of every even year through June 30, two years later.

4. Included in the registration form is the following attestation ("Attestation"): *"I have completed all applicable CE (Continuing Education) requirements for the renewal period stated in the Rules and Regulations for my profession."*
5. In 2018, the Board did not receive any renewal materials from Respondent relative to renewal of his license, so Respondent's license was not renewed on July 1, 2018.
6. Respondent appeared in front of the Investigative Committee and admitted that it was his usual practice to have his office staff renew his license to practice medicine for him.
7. Respondent admitted that, in 2018, neither he nor his staff submitted the necessary materials to apply for renewal of his license, but that he nevertheless continued to practice medicine at his usual place of business and engage in the practice of medicine between July 1, 2018 and August 28, 2018. Respondent made it clear his failure to apply for renewal was inadvertent.
8. The Investigative Committee issued a subpoena requesting documentary evidence from Respondent of his having completed CME requirements for the 2014 and 2016 license renewal periods, i.e., from July 1, 2014 through June 30, 2018.
9. In 2014 and 2016, the registration forms submitted for renewal of Respondent's license are marked "Y," meaning "yes," relative to the Attestation, indicating that Respondent attested to having completed all applicable CME requirements for both renewal periods.
10. Respondent admitted that he did not complete the renewal questions and that someone in his office did this for him.
11. Respondent supplied evidence of having completed some CME prior to July 1, 2014 and after July 1, 2018, but provided no evidence of having completed any CME between July 1, 2014 and June 30, 2018.

12. Respondent has violated R.I. Gen. Laws § 5-37-5.1(24), which defines "unprofessional conduct" as including "[v]iolating any provision or provisions of . . . chapter [5-37 of the Rhode Island General Laws] or the rules and regulations of the [Board] or any rules and regulations promulgated by the [Director] or of an action, stipulation, or agreement of the [Board]."

13. Respondent violated R.I. Gen. Laws § 5-37-2.1, which provides in relevant part that ~~"every physician licensed to practice medicine within this state shall, in connection with~~ *biannual registration, on or before the first day of June in each even-numbered year, provide satisfactory evidence to the board of medical licensure and discipline that in the preceding two (2) years the practitioner has completed a prescribed course of continuing medical education established by the appropriate medical or osteopathic society and approved by rule or regulation of the director or by the board of licensure and discipline."*

14. Respondent has further violated R.I. Gen. Laws § 5-37-5.1, having committed unprofessional conduct by engaging in the practice of medicine without a current license.

Based on the foregoing, the parties agree as follows:


1. Respondent admits to the jurisdiction of the Board.
2. Respondent has agreed to this Consent Order and understands that it is subject to final approval of the Board, and this Consent Order is not binding on Respondent until final ratification by the Board.
3. If ratified by the Board, Respondent hereby acknowledges and waives:
 - a. The right to appear personally or by counsel or both before the Board;
 - b. The right to produce witnesses and evidence on his behalf at a hearing;

- c. The right to cross examine witnesses;
- d. The right to have subpoenas issued by the Board;
- e. The right to further procedural steps except for those specifically contained herein;
- f. Any and all rights of appeal of this Consent Order;
- g. Any objection to the fact that this Consent Order will be presented to the Board for consideration and review; and
- h. Any objection that this Consent Order will be reported to the National Practitioner Data Bank and Federation of State Medical Boards, as well as posted on RIDOH's public web site.

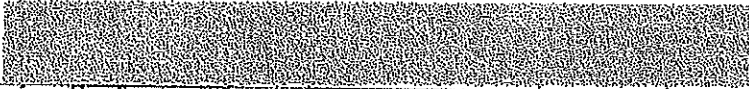
- 4. Respondent agrees to a Reprimand on his license.
- 5. Respondent hereby agrees to successfully 40 hours of category 1 CME within the next 12 months, of which 4 CME hours must pertain to the special topics approved by RIDOH. Respondent will send notice of compliance with this condition to DOH.PRCOMPLIANCE@health.ri.gov within 30 days of completion.
- 6. Respondent agrees to pay within five days of the ratification of this Consent Order an administrative fee to the Board with a check for \$1050.00 made payable to the "Rhode Island General Treasurer" for costs associated with investigating the above-referenced complaint. Respondent will send notice of compliance with this condition to DOH.PRCOMPLIANCE@health.ri.gov within 30 days of mailing the above-referenced payment.
- 7. If Respondent violates any term of this Consent Order after it is signed and accepted, the Director of the Department of Health shall have the discretion to

impose further disciplinary action, including immediate suspension of his medical license. If the Director imposes further disciplinary action, Respondent shall be given notice and shall have the right to request a hearing within 20 days of the suspension and/or further discipline. The Director of the Department of Health shall also have the discretion to request a hearing after notice to Respondent of a violation of any term of this Consent Order. The Board may suspend Respondent's license, or impose further discipline, for the remainder of Respondent's licensure period if any alleged violation is proven by a preponderance of evidence.

Signed this 5th day of August 2019.


Neil Toback, MD

Ratified this 4th day of August 2019 by the Board of Medical Licensure and Discipline.


Nicole Alexander-Scott, M.D., M.P.H.
Director
Rhode Island Department of Health
3 Capitol Hill, Room 401
Providence, Rhode Island 02908