COMMONWEALTH OF MASSACHUSETTS

Middlesex, SS. Board of Registration in Medicine

 Adjudicatory Case No. 2021-012

 )

In the Matter of )

 )

JOSEPH M. TOSHACH, M.D. )

 )

**CONSENT ORDER**

 Pursuant to G.L. c. 30A, § 10, Joseph M. Toshach, 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. 20-112.

Findings of Fact

1. The Respondent was born on February 15, 1965 and graduated from New York Medical College in June 1990. The Respondent is certified in Pediatrics by the American Board of Pediatrics. The Respondent has been licensed to practice medicine in Massachusetts under certificate number 237163 since August 6, 2008, in Maine since June 22, 1993, in New Hampshire since 2011 and New Jersey since 2017.
2. On November 7, 2019 the New Hampshire Board of Medicine (“New Hampshire Board”) reprimanded the Respondent’s license to practice medicine, assessed a $1,000 administrative fine and $2,000 in investigative and prosecution costs, and ordered the Respondent to complete continuing medical education for at least four hours in the area of history taking, evaluating, and assessing the headache patient when it accepted the Respondent’s Settlement Agreement (“New Hampshire Settlement Agreement”). The New Hampshire Settlement Agreement is attached hereto as Attachment A and incorporated herein by reference.
3. On May 1, 2016 at 10:15 a.m. thirteen-year-old Patient A was brought to Concord (NH) Hospital Emergency Department, where she was diagnosed with a migraine headache, prescribed and administered pediatric doses of migraine medications at 11:45 a.m., and ordered to undergo an outside brain MRI within three days of discharge.
4. The Respondent was called into the ED at 3:30 p.m. for a pediatric consult where he encountered Patient A asleep, did not wake her and relied on the ED physician’s earlier neurological assessment, and attributed Patient A’s somnolence to the sedating effects of the medication and reported lack of sleep the night before.
5. At 8:40 p.m. the Respondent was asked to admit Patient A to the pediatric floor and was informed of an elevation in Patient A’s temperature at 9:00 p.m. Patient A was admitted to the pediatric floor at 10:00 p.m. and at 10:53 p.m. Patient A was obtunded with dried blood in both nostrils, non-verbal, but able to squeeze a nurse’s hand and open her eyes upon request.
6. At 12:53 a.m. on May 2, 2016 Patient A was less responsive and her pupils were unequal. The Respondent arrived at Patient A’s bedside and ordered an urgent head CT scan, before which Patient A suffered cardiac arrest requiring resuscitation.
7. A head CT scan revealed the presence of a 3.8 cm mass in the fourth ventricle, mass effect, brainstem and cerebellar compression, and irreversible downward herniation. Patient A was transferred to Dartmouth Hitchcock Hospital for neurosurgery, from which Patient A never regained consciousness and died on May 6, 2016.
8. On September 10, 2018 a medical malpractice settlement was made related to the care of Patient A on May 1, 2016 at Concord Hospital.
9. The Respondent stipulated if a disciplinary hearing took place the New Hampshire Board Hearing Counsel would have proved the Respondent engaged in professional misconduct in violation of RSA 329:17, VI (c), and or/Med 501.01 (a), and/or Med 501 (e) (1).
10. The New Hampshire Board found the Respondent engaged in professional misconduct in violation of RSA 329:17, VI (c), and or/Med 501.01 (a), and/or Med 501 (e) (1). Conclusions of Law
11. 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:
12. The Respondent engaged in conduct that undermines the public confidence in the integrity of the medical profession. *See* Raymond v. Board of Registration in Medicine, 387 Mass. 708 (1982); Levy v. Board of Registration in Medicine, 378 Mass. 519 (1979).
13. The Respondent engaged in conduct which places into question the physician’s competence to practice medicine. *See* 243 CMR 1.05(a)(3).
14. The Respondent committed misconduct in the practice of medicine. *See* 243 CMR 1.03(5)(a)(18).
15. The Respondent committed malpractice. *See* G.L. c. 112 §61; 243 CMR 1.03(5)(a)(17).

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 Orderwith 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.

Signed by Joseph M. Toshach, M.D. 1/20/21

Joseph M. Toshach, M.D. Date

Licensee

Signed by Amy E. Goganian 1/22/21

Amy E. Goganian Date

Attorney for the Licensee

Signed by Patrick G. Fitzgerald 1/22/2021

Patrick G. Fitzgerald Date

Complaint Counsel

 So ORDERED by the Board of Registration in Medicine this 25 day of \_March\_\_\_, 20\_21\_\_.

 Signed by George Abraham, M.D.

 George Abraham, M.D.

 Board Chair

To obtain a copy of the out-of-state disciplinary order, please contact the appropriate state’s medical licensing board directly. A list of state medical boards and contact information is available at <https://www.fsmb.org/contact-a-state-medica-board/>. You may also obtain a copy of the out-of-state disciplinary order by submitting a public records request (PRR) with the Massachusetts Board of Registration in Medicine. PRR forms and additional information can be found at <https://www.mass.gov/board-of-registration-in-medicine-public-records>.