

COMMONWEALTH OF MASSACHUSETTS BOARD OF
REGISTRATION IN MEDICINE

MIDDLESEX, ss

Adjudicatory Case No. 2022-012
(DALA No. 19-0412)

In the Matter of)

)

FINAL DECISION AND ORDER

Lee S. Altman, M.D.)

)

Procedural History

The Board initiated this proceeding by first issuing an August 8, 2019 Statement of Allegations (SOA), then issuing a March 25, 2021 Amended SOA, and referring the matter to the Division of Administrative Law Appeals (DALA). DALA Magistrate Angela McConney held a five-day hearing in April-May of 2022.¹ On October 26, 2023, DALA Magistrate Yakov Malkiel (Magistrate) issued a Recommended Decision.

The Parties² filed Objections to the Recommended Decision (Objections), and the Respondent filed an Opposition to Complaint Counsel's Objections (Opposition). The Parties filed Memoranda on Disposition. The Board has heard from the Parties and has fully considered the Recommended Decision, the Parties' Objections, the Respondent's Opposition, a Victim Impact Statement, and the Parties' Memoranda on Disposition. After full consideration of the Parties' Objections,³ the Respondent's Opposition, the Magistrate's Recommended Decision, and the Parties' Memoranda on Disposition, the Board ADOPTS the Recommended Decision, as amended to:

- add, as a conclusion of law, that the Respondent failed to furnish the Board with information to which it is entitled, pursuant to 243 CMR 1.03(5)(a)16;

¹ Upon Magistrate McConney's appointment to the Civil Service Commission, the parties agreed not to repeat the evidentiary hearing, and the case was reassigned. See 801 CMR 1.01(11)(e).

² Complaint Counsel is James Paikos. Attorney David Gould represents the Respondent.

³ The Board is not required to address each of the Parties' objections or provide a specific response for rejecting the objections. See *Arthurs v. Board of Registration in Medicine*, 383 Mass. 229, 315-316 (2005).

- strike the second and third sentences of footnote 10 on page 14 of the Recommended Decision⁴;
- strike the second, third and fourth sentences from the first paragraph of section V on page 15 of the Recommended Decision, along with the words “Even so,” at the start of the next paragraph⁵; and
- add a sanction, as follows:

Sanction

The record reflects that the Respondent, a psychiatrist, “committed repeated, habitual negligence by failing to refer to [MassPAT] before prescribing benzodiazepines to his patients,”⁶ billed for sessions when he “knew that his pertinent sessions...did not occur,”⁷ failed to report his termination by Harvard Vanguard, which he “understood...was a ‘disciplinary action’,”⁸ and failed to provide information about law enforcement personnel’s execution of a search of his office and removal of records on his 2021 license renewal application (LRA), consistent with the LRA instructions.

In so doing, the Respondent:

⁴ In these sentences, the Recommended Decision cites to the *Welter* decision, *supra*, as holding that “Unlike terms such as ‘deceit,’ ‘fraudulent procurement’ evokes the classic elements of common law fraud. *Welter*, 490 Mass. at 727. These elements include “reliance,” meaning that the deceived person must have “relief upon the representation as true and acted upon it.” The Board notes that in its decision *In the Matter of Gabriel Luna*, M.D., Board of Registration in Medicine, Adjudicatory Case No. 2020-010 (Final Decision and Order, June 15, 2023) the Board struck language from the Recommended Decision before adopting it into the *Luna* Final Decision and Order. In *Luna*, the Recommended Decision noted that “fraudulent procurement was not at issue in *Welter* and that the Court did not expound on what would need to be shown to prove such a charge.” The *Luna* Recommended Decision then proceeded to speculate that “If the elements of common law fraud applied, then it would seem that the Board would have to show ... knowledge of falsity for the purpose of inducing the Board to act ... and that the Board relied upon the representation” before pulling back from this conjecture towards the fact that the Magistrate had “found no court decision describing whether this full panoply of common law elements must be proven.” Consequently, the Board strikes the aforementioned sentences in this matter to maintain consistency among the final decisions.

⁵ These sentences comment on the Board’s authority to discipline physicians on the grounds of “undermining public confidence in the integrity of the medical profession” as established in *Levy v. Board of Registration in Medicine*, 378 Mass. 519 (1979) and *Raymond v. Board of Registration in Medicine*, 387 Mass. 708 (1982) and reaffirmed in *Sugarman v. Board of Registration in Medicine*, 422 Mass. 338, 343 (1996) (“Conduct which undermines public confidence in the integrity of the medical profession is an independently sufficient ground for the board to sanction a physician. Such conduct is not limited to that outlined in G. L. c. 112, s. 5 ... The board has broad authority to protect the image of the medical profession and is not limited to disciplining conduct involving direct patient care, criminal activity, or deceit”). The comments are not relevant in this proceeding because the actual finding is that the application of this ground for discipline is in fact warranted in this case. The Board strikes the comments lest incorporation into the Final Decision attribute to the Board the views expressed, with which the Board does not concur.

⁶ Recommended Decision, p. 15.

⁷ *Id.* at p. 13.

⁸ *Id.* at p. 10.

- violated 105 CMR 700.001(G)(1), promulgated by the Department of Public Health pursuant to the statute that establishes MassPAT, G.L. c. 94C, § 24A;
- engaged in dishonesty, fraud or deceit which is reasonably related to the practice of the profession, G.L. c. 112, §61;
- practiced medicine deceitfully, or engaging in conduct which has the capacity to deceive or defraud, 243 CMR 1.03(5)(a)10;
- failed to report to the Board a disciplinary action taken against him by a health care institution, governmental authority or law enforcement agency for acts which constitute grounds for complaint under the Board's regulations, 243 CMR 1.03(5)(a)15;
- failed to furnish the Board information to which the Board is entitled, 243 CMR 1.03(5)(a)16;
- engaged in conduct which places into question his competence to practice medicine, including negligence on repeated occasions, G.L. c. 112, §5, 8th para., (c), 243 CMR 1.03(5)(a)3; and
- engaged in conduct that undermines public confidence in the integrity of the medical profession, *Levy v. Board of Registration & Discipline in Med.*, 378 Mass. 519 (1979) and *Raymond v. Board of Registration in Med.*, 387 Mass. 708 (1982).

The Board has considered the appropriate sanction based on three areas of offenses and in light of the bases for discipline.

Failing to check MassPAT

The Board has imposed a wide range of sanctions, from required continuing medical education (CME) to revocation of the inchoate right to renew a license for failure to comply with the mandate to check MassPAT.⁹ Each time the Respondent failed to check MassPAT, he not only acted in complete disregard of the authority of the Commonwealth, but undermined the Department of Public Health's implementation of a risk management measure, prescription monitoring, directly linked to the Board's paramount

⁹ See *In the Matter of Ronald Abramson, M.D.*, Board of Registration in Medicine, Adjudicatory Case No. 21-043 (Consent Order, November 4, 2021). (Board imposed reprimand where physician failed to check MassPAT for four patients and there was no evidence that patients were obtaining medications from more than one provider); *In the Matter of Dr. Sauls*, Board of Registration in Medicine, Adjudicatory Case No. 21-045 (Consent Order, November 4, 2021) (Board imposed reprimand and permanent restriction from prescribing medications in Schedules II-IV, based on physician's failure to check MassPAT for five patients and substandard care in the area of prescribing); *In the Matter of Thomas Stinson, M.D.* Board of Registration in Medicine, Adjudicatory Case No. 2022-24 (Final Decision and Order, February 2, 2023). (Board revoked physician's inchoate right to renew his license, where physician failed to defend at DALA, was negligent, failed to check MassPAT, and Board specifically noted that training would not change the physician's practice of medicine.)

responsibility, protection of the public health, safety and welfare.¹⁰ The Board determines that required oversight of the Respondent's use of MassPAT is required to ensure public safety.

Billing

"The Supreme Judicial Court has made clear that...[wrongful billing] actions are within the scope of a physician's practice of medicine, because '[t]he practice of modern medicine involves financial management....' *Levy v. Board of Registration & Discipline in Med.*, 378 Mass. 519, 526-527 (1979). The Board has imposed indefinite suspension or revocation when a physician has "acted fraudulently or in a manner that had the capacity to deceive or defraud."¹¹ The Board determines that required oversight of the Respondent's billing is required given the Respondent's willfully and intentionally billing for sessions that did not occur.

License Renewals

"In its system of initial licensure and re-licensure, the Board depends on the accuracy and integrity of the information provided by physicians."¹² The Board's required reporting of discipline and investigations on license applications is integral to physician credentialing, a risk management tool directly linked to ensuring that only qualified physicians are licensed.

The Board relies on renewal responses not just to determine whether license renewal is warranted, but to identify instances where investigation of possible violations of Board regulations or policies is warranted. Health care facilities also review and rely on responses in license applications pursuant to the credentialing requirements in the Board's Qualified Patient Care Assessment Program regulations.¹³

When fashioning a sanction for a physician who has not furnished complete and accurate information on applications, the Board considers the totality of the circumstances. The Board distinguishes between instances where a physician fails to respond accurately to questions due to oversight or carelessness

¹⁰ See *Levy*.

¹¹ See e.g. *In the Matter of Paula Hallett, M.D.*, Board of Registration in Medicine, Adjudicatory Case No. 88-54-T (Final Decision and Order, September 6, 1989)(Board imposed license suspension where physician's wrong-doing included negligent billing errors with two patients and the physician acknowledged the errors)(The Board stated, "In the past, the Board has revoked the licenses of those who have been guilty of fraudulent billing practices"; See also *In the Matter of Ranjit Chandra, M.D.*, Board of Registration in Medicine, Adjudicatory Case No. 2018-060)(Final Decision and Order, February 6, 2020)(Board revoked physician's inchoate right to renew his license for "billing improprieties" in another jurisdiction); and *In the Matter of Ashok N. Bhargava, M.D.*, Board of Registration in Medicine, Adjudicatory Case No. 2006-019 (Consent Order, April 12, 2006)(Board indefinitely suspended physician who wrote two progress notes implying he had seen patients in the hospital within the past twelve hours, when he had instead seen each the following day, and agreed he had practiced medicine deceitfully, or engaged in conduct which has the capacity to deceive or defraud, had engaged in misconduct in the practice of medicine, and had undermined public confidence in the integrity of the medical profession.)

¹² *In the Matter of Praveen N. Adhyapak, M.D.*, Board of Registration in Medicine, Adjudicatory Case No. 2005-033 (Final Decision and Order, December 7,

¹³ See 243 CMR 3.05(3)(b).

and those where a physician knowingly and intentionally furnishes inaccurate or incomplete responses.¹⁴ So, too, the Board considers any mitigating circumstances, if any.¹⁵

In the pendant case, the Board determines that the Respondent's failure to complete three license renewal applications accurately and completely, together with the absence of mitigating circumstances, warrants oversight of the Respondent's completion of credentialing documents.

In light of the Respondent's pattern of undermining the Department of Public Health's prescription monitoring and credentialing risk management tools, and in consideration of the Respondent's pattern of dishonesty and deceit, the Board imposes a \$10,000 FINE and INDEFINITELY SUSPENDS the Respondent's license. The Board stays the indefinite suspension for sixty (60) days to allow the Respondent to enter into a standard, five-year Board Probation Agreement. The Probation Agreement must include additional terms which require the Respondent to arrange for, and pay the costs associated with, monitoring of his completion of credentialing applications, use of MassPAT and billing, by a Board-approved entity, such as Affiliated Monitors. If the Respondent executes and files such a Probation Agreement and a petition to further stay suspension within 60 days, the stay will be extended until such time as the Board takes action on the Respondent's petition to further stay suspension and accept the proposed Probation Agreement.

The fine is payable within ninety (90) days of the issuance of this Final Decision and Order. The Board will not renew the license of any physician who fails to pay a fine in a timely fashion; this step will be taken automatically, and no further notice or process will apply.

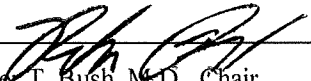
The Respondent shall provide a complete copy of this Final Decision and Order, with all exhibits and attachments within ten (10) days by certified mail, return receipt requested, or by hand delivery to the following designated entities: any in- or out-of-state hospital, nursing home, clinic, other licensed facility, or municipal, state, or federal facility at which he practices medicine; any in- or out-of-state health maintenance organization with whom he has privileges or any other kind of association; any state agency, in- or out-of-state, with which he has a provider contract; any in- or out-of-state medical employer, whether or not he practices medicine there; the state licensing boards of all states in which he 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 he becomes associated for the duration of his indefinite suspension and probationary term. The Respondent is further

¹⁴ See *In the Matter of Charles M. Poser, M.D.*, Board of Registration in Medicine, Adjudicatory Case No. 88-62-SU.

¹⁵ *In the Matter of Gabriel Luna, M.D.*, Board of Registration in Medicine, Adjudicatory Case No. 2020-2010 (June 15, 2023). The Board considered a physician's lack of intent to mislead and his reliance on his attorney's counsel when imposing discipline for failure to report criminal charges.

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. The Respondent has the right to appeal this Final Decision and Order within thirty (30) days, pursuant to G.L. c. 30A, §§14 and 15, and G.L. c. 112, § 64.

Date: May 9, 2024



Booker T. Bush, M.D., Chair
Board of Registration in Medicine