

COMMONWEALTH OF MASSACHUSETTS
BOARD OF REGISTRATION IN MEDICINE

MIDDLESEX, ss

Adjudicatory Case No. 2017-004
(RM-17-054)

In the Matter of)
)
Boris Bergus, M.D.)
_____)

FINAL DECISION AND ORDER

This matter came before the Board for disposition on the basis of the Administrative Magistrate's August 9, 2018 Recommended Decision on Petitioner's Motion for Summary Decision, the Respondent's Limited Objection to the Administrative Magistrate's Recommended Decision (Respondent's Objection), Petitioner's Response to the Respondent's Objection, and the Parties' Memoranda on Disposition. After full consideration of the Recommended Decision, which is attached hereto and incorporated by reference, and all additional submissions, the Board adopts the Recommended Decision, as amended:

- i. to clarify that the Board explicitly disregards "Undisputed Fact" "8," since the information contained therein appears neither in this Board's January 26, 2017 Statement of Allegations nor in the Respondent's October 4, 2013 Rhode Island Consent Order (Consent Order) on which this Board bases its reciprocal discipline; and
- ii. adding the following:

Sanction

As a function of this Board's obligation to protect the public health, safety, and welfare, it is proper for the Board to discipline the Respondent. See *Levy v. Board of Registration in Medicine*, 378 Mass. 519 (1979). Pursuant to 243 CMR 1.03(5)(a)12, the Board has the authority to discipline a physician who has been "disciplined in another jurisdiction in any way 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)." The Board may impose discipline based on another state's disciplinary action, without re-litigating the underlying facts. See *In the Matter of Randolph Ramirez, M.D.* 441 Mass. 479 (2004). When the Board imposes reciprocal discipline, the Board may impose any sanction consistent with its policies and precedent and based on out-of-state facts, not the out-of-state sanction. See *In the Matter of Robert Schlossman, M.D.*, Board of Registration in Medicine,

Adjudicatory Case No. 85-12-RO (Final Decision and Order, November 5, 1986) (Board noted that the fact that another state stayed its sanction did not require same outcome in Massachusetts).

The record reflects that the Respondent was disciplined by the Rhode Island Board for misstating his credentials. When a physician falsely answers a question on a licensing application, the physician deprives the Board of the opportunity to review his or her record and determine whether he or she should be licensed to practice medicine in Massachusetts. *In the Matter of Irina Z. Agronin, M.D.*, Board of Registration in Medicine, Adjudicatory Case No. 02-06-DALA (Final Decision and Order, August 21, 2002). By analogy, when a physician misstates credentials on applications to health care facilities and provider networks, the physician subverts the risk management function that underlies credentialing. When a physician misstates his credentials in advertising, and on state physician profiles, the physician deprives patients the opportunity to make informed choices as consumers.

There is a range of discipline the Board has imposed in cases where physicians have misstated their credentials. At one end of the spectrum, the Board has imposed censure as a sanction. See *In the Matter of Gloria Johnson-Powell, M.D.*, Board of Registration in Medicine, Adjudicatory Case No. 99-05-XX (Consent Order, March 3, 1999)(The physician testified, in multiple court proceedings, that she was board-certified when she was not. The Board identified mitigating factors: i. the lack of evidence that the physician misrepresented her credentials to the Board or any medical facility; and ii. the physician's entry into a voluntary agreement with the American Board of Psychiatry and Neurology pledging never to represent herself as board-certified.)

At the other end of the spectrum, the Board has imposed an indefinite suspension and \$10,000 fine, and required community service as the sanction and allowed the physician to petition to end the suspension upon payment of the fine, amendment of answers, and completion of community service. See *In the Matter of Michael G. Ciborski, M.D.*, Board of Registration in Medicine, Adjudicatory Case No. 99-18-XX (Consent Order, August 25, 1999)(The physician: i) falsely indicated on five license renewal applications, a health care facility reappointment application, and a health care provider insurance network application that he was certified by the American Board of Surgery; and ii) forged a board-certification certificate.)

In the middle of the spectrum are cases in which the Board has imposed a reprimand and fine. See In the Matter of Tushar C. Patel, M.D., Board of Registration in Medicine, Adjudicatory Case No. 2008-042 (Consent Order, November 19, 2008)(The Board imposed a reprimand and \$2,500 fine for misrepresenting board certifications on multiple renewal applications. The Board determined that the physician had undermined the integrity of the medical profession.); See In the Matter of Arthur Portnow, M.D., Board of Registration in Medicine, Adjudicatory Case No 00-13-XX (Consent Order, March 22, 2000)(The Board imposed a reprimand and \$5,000 fine as reciprocal discipline by another state for misrepresenting to a facility that he was board-certified in internal medicine and cardiovascular diseases and submitting forged documents to the facility attesting to his board certification. The other state suspended him for two years and allowed him to petition for reinstatement upon entering a Probation Agreement requiring monitoring of his practice. The only conclusion of law was that the physician had been disciplined in another state for substantially similar reasons.)

Limited to the four corners of the Rhode Island Consent Order, and acknowledging the Respondent's fulfillment of all requirements under the Rhode Island Consent Order (including a reprimand, probation for two years, a \$10,000 administrative fee to the Board, required completion of the Professional/Problem Based Ethics ("PROBE") course, and required retention and cooperation with Affiliated Monitors, Inc. for the purpose of reviewing for accuracy all credentialing applications and advertising), the Board hereby imposes a \$10,000 fine and INDEFINITELY SUSPENDS the Respondent's license to practice medicine. The Board will stay the suspension upon the Respondent's entering a standard, five-year Board Probation Agreement that also requires the Respondent to arrange for, and pay the costs associated with, monitoring of his credentialing applications, advertising, and media communications under his control by a Board-approved entity, such as Affiliated Monitors, Inc., for three years. The sanction is imposed for each violation of the law, and not a combination of any or all of them. The Respondent must pay the fine within 60 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 manner; 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; and the state licensing boards of all states in which he has any kind of license. The Respondent shall also provide this notification to any such designated entities with which he becomes associated during the term of his indefinite suspension and probation. 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. The Respondent has the right to appeal this Final Decision and Order within (30) days, pursuant to G.L. c. 30A, §§14 and 15, and G.L. c.112, §64.

Date: June 27, 2019

Candace Lapidus Sloane, MD

Candace Lapidus Sloane, M.D.
Board Chair
Board of Registration in Medicine