COMMONWEALTH OF MASSACHUSETTS
BOARD OF REGISTRATION IN MEDICINE

MIDDLESEX, SS

Adjudicatory Case No. 2022-026
(RM-22-0333)

In the Matter of

John R. Diggs, M.D.

FINAL DECISION AND ORDER

Procedural History[1]

The Board of Registration in Medicine ("Board" or "BORIM") issued a Statement of Allegations (SOA) against John R. Diggs, M.D. (Respondent) on August 4, 2022, alleging that the Respondent had provided treatment for COVID-19 falling below the accepted standard of care to two patients. Concurrently with issuing with SOA, the Board referred the matter to the Division of Administrative Law Appeals (DALA) for an evidentiary hearing to determine factual findings and rulings of law. The Respondent filed his Answer on September 6, 2022[2]. In August 2024, this matter returned to the Board for action on the Administrative Magistrate's, Kenneth Bresler, (Magistrate) Order of Dismissal Recommended Decision (Recommended Dismissal). On October 24, 2024, the Board issued its Ruling on Motions for Remand, rejecting the Magistrate's recommendation and remanding the matter to DALA for conducting proceedings consistent with the Order of Reference.

On January 24, 2025, the Magistrate issued an Order for Default, Recommended Decision (Recommended Decision). The Magistrate recommends that the Board find the following: (1) the Respondent has failed to defend/prosecute his defense of the Amended SOA; (2) the allegations in the Amended SOA be deemed admitted; (3) the Respondent violated the laws set forth in the

[1] The Board's October 24, 2024 Ruling on Motions for Remand and the Board's June 12, 2025 Ruling on Motion for Remand and on Respondent's Objections provide further detail on the specific procedural history leading to each of those rulings.

[2] On June 13, 2024, the Board issued an amended SOA, alleging that Respondent had provided treatment for COVID-19 falling below the accepted standard of care to an additional two patients. Respondent filed a Response to the Amended SOA on August 7, 2024.

Legal Basis for Proposed Relief; and that the Board discipline the Respondent as it finds appropriate. The Respondent filed both a Motion to Remand to DALA and Objections to the Recommended Decision and Request for Hearing (Respondent's Objections). On June 12, 2025, the Board issued its Ruling on Motion for Remand and on Respondent's Objections. In its ruling, the Board denied the motion to remand the matter to DALA. The Board also rejected Respondent's Objections and adopted the Recommended Decision; thereby finding the Respondent in default and deeming the allegations in the Amended Statement of Allegations to be true.

In its June 12, 2025 ruling, the Board also provided the Parties 14 days to submit a memorandum on disposition to be considered by the Board when determining sanction. On June 24, 2025, Respondent filed a Request for Extension and Waiver relating to 180 Day Time Limit[3], seeking leave to file his memorandum on disposition on or before July 3, 2025. The Petitioner filed a memorandum on disposition on June 27, 2025 and the Respondent filed a memorandum on disposition on July 2, 2025. The Board accepts these memoranda as timely filed.

Petitioner's Memorandum on Disposition summarizes the facts set in the Amended Statement of Allegations and asserts that application of Board precedent to the facts supports imposition of an indefinite suspension, which may be stayed on entry into a probation agreement. It further contends that the probation agreement should require completion of a skills assessment and monitoring to assure the veracity of his statements about his credentials, as well as correction of the credentialing information on his prior applications and his website.

Respondent's Memorandum on Disposition articulates his intent to file an appeal and contests what Respondent believes to be misstatements in the record as to communications between the parties and the magistrate. However, Respondent also asks that the Board consider certain information should the Board proceed with imposing a sanction. First, Respondent asserts that he has re-established certification by the American Board of Internal Medicine. Next, Respondent submits that Patients A, C and D sought "alternative therapies," that they "do not feel that the treatment they received fell below the standard of care," and that they have asserted a "Right to Try." Lastly he attributes the deficiencies in his record keeping with respect to Patients A and B to lacking "direct access" or having only "limited contact" with the patients.

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[3] Respondent waived the right to include as an issue in any appeal of this proceeding the fact that the final decision and order was not issued within 180 days of the issuance of the Recommended Decision in accordance with 801 CMR 1.01(11)(c)(3).

Discussion

1. Modification of the Ruling on Motion for Remand and on Respondent's Objections.

The Board strikes the second sentence of the second paragraph under Part 1 of the Discussion and inserts in its place the following two sentences:

> Specifically, on April 4, 2023, the Magistrate notified the parties in an email that he could not "get a hearing room at DALA" for the dates June 14, 2023 through June 23, 2023. In that email, the Magistrate requested "Can the parties confer and propose other dates?"

In all other respects, the Board reaffirms its June 12, 2025 ruling, finding that Respondent in default and deems that the allegations in the Amended Statement of Allegations to be proven true. The Board further attaches hereto and incorporates by reference both the Amended Statement of Allegations and the Magistrate's January 24, 2025 Recommended Decision. In addition, the Board deems the default to establish the following conclusions of law:

(a) Respondent engaged in conduct which places into question his competence to practice medicine, including but not limited to gross misconduct in the practice of medicine, or practicing medicine fraudulently or beyond its authorized scope, or with gross incompetence, or with gross negligence on a particular occasion, or negligence on repeated occasions, and that this conduct warrants the imposition of discipline by the Board pursuant to G.L. c. 112, § 5, ninth par. (c) and 243 CMR 1.05(a)(3).

(b) Respondent engaged in misconduct in the practice of medicine that this warrants the imposition of discipline by the Board pursuant to 243 CMR 1.05(a)(18).

(c) Respondent failed to maintain a medical record for each patient that is adequate to enable the licensee to provide proper diagnosis and treatment, and that he failed to maintain a patient's medical records in a manner which permits the former patient or a successor physician access to them, in violation of 243 CMR 2.07(13)(a), and that this conduct warrants the imposition of discipline by the Board pursuant to G.L. c. 112, § 5, eighth par. (h) and 243 CMR 1.03(5)(a)(11) for violating a rule or regulation of the Board.

(d) Respondent engaged in conduct that undermines the public confidence in the integrity of the medical profession and that this that this conduct warrants the imposition of discipline by the Board pursuant to *Levy v. Board of Registration in Medicine*, 378 Mass 519

(1979); *Raymond v. Board of Registration in Medicine*, 387 Mass. 708 (1982) and *Sugarman v. Board of Registration in Medicine*, 422 Mass. 338 (1996).

(e) Respondent practiced medicine deceitfully or engaged in conduct which has the capacity to deceive or defraud that this warrants the imposition of discipline by the Board pursuant to 243 CMR 1.05(a)(10).

(f) Respondent failed to respond to a subpoena or to furnish the Board, its investigators or representatives, documents, information or testimony to which the Board is legal entitled and that this warrants the imposition of discipline by the Board pursuant to 243 CMR 1.05(a)(16).

2. Applicable Precedent and Mitigating Circumstances

a. Prescriptive Practice and Medical Record Deficiencies

The Board has frequently imposed a reprimand in matters where physicians have prescribed medications to patients without having first obtained an adequate history, conducted necessary physical examinations or assessments and without having documented sufficient information in the patients' medical records to support the medical basis for the prescriptions. *In the Matter of Debra Little*, M.D., Board of Registration in Medicine, Adjudicatory Case No. 2017-038 (Final Decision and Order, December 2, 2021)(reprimand imposed where physician prescribed benzodiazepines without obtaining and documenting adequate medical history and without conducting an assessment of risk); *In the Matter of George Hayao*, M.D., Board of Registration in Medicine, Adjudicatory Case No. 2020-041 (Final Decision and Order, December 2, 2021)(reprimand imposed where physician prescribed controlled substances to two patients for many years without conducting any physical examination, without communicating with the patients' other providers and without maintaining medical records); *In the Matter of Anthony Eaton*, M.D., Board of Registration in Medicine, Adjudicatory Case No. 2024-012 (Consent Order, March 14, 2024)(reprimand imposed where physician's medical records reflected internally inconsistent medications and did not include sufficient explanation for the medications being prescribed); *In the Matter of Mark Allara*, M.D., Board of Registration in Medicine, Adjudicatory Case No. 2024-004 (Consent Order, March 14, 2024)(reprimand

imposed where physician engaged in prescribing irregularities that included prescribing medications without a correlating diagnosis or associated documented symptoms).

Respondent addresses his record keeping practices by noting his lack of "direct access" to Patient A and having "limited contact" with Patient B. To the extent that Respondent suggests that lack of access to his patients explains, justifies or exonerates record keeping deficiencies, the Board does not concur. Rather, the Board views Respondent's lack of access to the patients as a circumstance where Respondent should have refrained from providing treatment and prescribing medications due to having an inadequate basis of necessary information. Respondent's lack of access to the patients prevented him from conducting appropriate physical examinations, reviewing relevant medical history, ordering appropriate tests and otherwise gathering the information. This did not merely result in the records being deficient, but rather highlights the lack of a sufficient medical rationale for the treatment and prescriptions he provided. The Board does not find that Respondent's lack of access to his patients mitigates either his deficient record keeping or the absence of sufficient information to support his prescriptions to Patients A, B, C and D.

Respondent also asks that the Board consider that he is "fully supported" by Patients A, C and D and that his patients "do not feel that the treatment they received fell below the standard of care." He offers a variety of considerations in support of his prescriptions which include that the patients requested "alternative therapies" and the specifically prescribed medications, that the patients were exercising a "right to try[4]," and that Patient B (who passed away) may not in fact have ingested the prescribed medication. The Board does not deem any of these to mitigate Respondent's conduct. Rather, this collection of proffered justifications suggests that Respondent views the role of a physician as that of a scribe with a prescription pad, reduced to serving as a conduit for patients to self-prescribe medications as they may decide to "try." It turns the accepted norm for determining the standard of care on its head by substituting patients'

[4] Respondent does not elaborate on what legal basis he contends the "Right to Try" may be based, nor what he contends the "Right to Try" entails. In Massachusetts, no "Right to Try" legislation has been enacted. The federal *Trickett Wendler, Frank Mongiello, Jordan McLinn, and Matthew Bellina Right to Try Act of 2017* (115th Congress Public Law 176) applies to eligible patients to have access to eligible investigational drugs. The Board is not aware of any information to suggest that either Respondent's patients or Respondent's prescribed medications qualify under this Act.

layman impressions about the care they received in place of expert opinion as to whether the care conforms to that which would be rendered by the average qualified physician[5].

b. Representations concerning Credentials

In matters involving false and deceptive advertising by physicians with respect to their credentials, the Board has imposed an indefinite suspension which may be stayed upon entry into a probation agreement that included requirements for monitoring of the physicians' credentialing applications, media communications and advertising during the period of probation. *In the Matter of Ryan Welter, M.D.*, Board of Registration in Medicine, Adjudicatory Case No. 2019-029 (Final Decision and Order, March 11, 2021)(physician's website had capacity to deceive that physician held board certification in a specialty related to hair restoration and that physician's employee was a licensed physician); *In the Matter of Boris Bergus*, M.D., Board of Registration in Medicine, Adjudicatory Case No. 2017-004 (Final Decision and Order, June 27, 2019)(physician's website and advertisements misrepresented that he completed a fellowship training). The Board has also imposed sanctions on physicians who misrepresent their credentials on their license applications submitted to the Board and in other contexts. *In the Matter of Gloria Johnson-Powell*, Adjudicatory Case No. 99-05-XX (Consent Order, March 3, 1999)(reprimand imposed on physician who falsely testified in 5 court proceedings where she served as expert witness that she was certified by the American Board of Psychiatry and Neurology); *In the Matter of Tushar Patel*, Adjudicatory Case No. 99-05-XX (Consent Order, November 19, 2008)(reprimand and fine imposed on physician who falsely indicated on multiple BORIM license renewal applications that he held American Specialty Board Certifications in Emergency Medicine and Family Practice); *In the Matter of Michael Ciborski*, Adjudicatory Case No. 99-18-XX (Consent Order, August 25, 1999)(indefinite suspension, community service and fine imposed on physician who falsely indicated on multiple BORIM license renewal applications, and on multiple applications for appointment or reappointment at health care facilities, that he held certification from the American Board of Surgery, and further created a forged certificate using the certification number of another physician); *In the Matter of Halbert*

[5]. See Zaleskas v. Brigham & Women's Hosp., 97 Mass. App. Ct. 55, 70, 141 N.E.3d 927, 942 (2020) citing Palandjian v. Foster, 446 Mass. 100, 104, 842 N.E.2d 916, 921 (2006)("the standard of care is based on the care that the average qualified physician would provide in similar circumstances").

Miller, Adjudicatory Case No. 2015-009 (Consent Order, February 19, 2015)(reprimand and fine imposed on physician who continued to issue prescriptions after license lapsed and who falsely indicated on multiple BORIM license renewal applications, that he held certification in addiction psychiatry after such certification lapsed); *In the Matter of Richard Goldman*, Adjudicatory Case No. 2008-007 (Consent Order, February 20, 2008)(reprimand and fine imposed on physician who failed to maintain a patient record for seven years following the patient's last encounter and for continuing to submit BORIM license renewal applications indicating that he held certification in internal medicine after such certification lapsed).

In this matter, Respondent continued to advertise on his website, and submit on his renewal applications, that he held board certification from the American Board of Internal Medicine after this certification lapsed. However, the Board credits both the Respondent's willingness to amend his last three renewal applications to reflect that he was not board certified as of the date of each application, and his assertion that his certification is once again active and valid. With these considerations in mind, the Board determines that a period of monitoring of his credentialing applications, media communications and advertising under a probation agreement is not warranted.

Order

In light of the Respondent's substandard prescribing, his failure to maintain adequate medical records and his false and deceptive advertising on his website during the period that his board certification was lapsed, the Board hereby imposes a REPRIMAND on Respondent's license to practice medicine. The Board further orders the Respondent to amend the renewal applications submitted to the Board in 2019, 2021 and 2023 with correct information as to his board certification status as of the original date of submission of each renewal application, to be completed within sixty days of the issuance of this Final Decision and Order[6].

[6] Respondent's July 2, 2025 Memorandum on Disposition asserts on page 7 that Respondent "will amend his last three renewal applications to reflect that he was not board certified as of the date of the renewal." However, at his hearing on sanction on August 21, 2025, Respondent's counsel asserted that on the dates of the application renewals his board certification was *not* lapsed and that he possessed documentation from the American Board of Internal Medicine that specified the effective dates of the lapse. In consideration of this new information, the Respondent may submit a petition to the Board to reconsider the portion of this order that requires that he amend his renewal applications to the extent that he is able to provide documentation demonstrating the effective dates of the certification lapse.

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 one year within issuance of this Order. 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 thirty (30) days, pursuant to G.L. c. 30A, §§14 and 15.

On August 21, 2025 in accordance with the Board's authority and statutory mandate, the Board voted to issue this Final Decision and Order, reprimanding Dr. John R. Diggs' license to practice medicine under certificate number 71456.

Board Members Voting Affirmatively

- Booker T. Bush, M.D., Physician Member, Chair
- Frank O'Donnell, Esq., Public Member, Vice Chair
- Aviva Lee-Parritz, M.D., Physician Member
- Jason Qu, M.D., Physician Member

Board Members Voting to Oppose:

None

Board Members Recused:

- Sandeep Singh Jubbal, M.D., Physician Member, Secretary

Board Members Absent:

- Yvonne Y. Cheung, MD, MPH, MBA, Physician Member

EFFECTIVE DATE OF ORDER

The Final Decision and Order is effective as of August 21, 2025.

Date Issued: August 21, 2025

George Zachos, Executive Director
Board of Registration in Medicine