09/26/14 S33

COMMONWEALTH OF MASSACHUSETTS

MIDDLESEX, SS.

BOARD OF REGISTRATION IN MEDICINE

Adjudicatory Case No. 2013-047
(RM-13-486)

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| In the Matter of | |
| STEPHEN FRIEDMAN, M.D. | Final Decision and Order |

This matter came before the Board of Registration in Medicine (the "Board") for final disposition on the basis of the Administrative Magistrate's Recommended Decision, dated June 10, 2014. The Board has considered the Petitioner's Memorandum on Disposition; the Respondent's Memorandum on Disposition; and the Recommended Decision, which is attached and incorporated by reference. The Board adopts the Recommended Decision, amending it by adding the following:

Sanction

The Board has the authority to discipline the Respondent because he was disciplined by the New Hampshire Board of Medicine ("New Hampshire Board") for "substantially the same" reasons that this Board may discipline a physician if the conduct had occurred in Massachusetts. See 243 CMR § 1.03(5)(a)12. The Respondent was disciplined by the New Hampshire Board for failing to disclose on a license application that his Massachusetts license to practice medicine had been reprimanded for improperly disposing Fentanyl. The New Hampshire Board's reason for disciplining the Respondent is substantially similar to conduct prohibited by:

(1) 243 CMR § 1.03(5)(a)15, which provides that "[f]ailure to report to the Board, within the time period provided by law or regulation, any disciplinary action taken against the licensee by another licensing jurisdiction (United States or foreign) . . . for acts or conduct substantially the same as acts or conduct which would constitute grounds for complaint as defined in 243 CMR 1.03(5)[;]"
(2) 243 CMR § 1.03(5)(a)1, which proscribes the "[f]raudulent procurement of his or her certificate of registration or its renewal[;]" and
(3) 243 CMR § 1.03(5)(a)11, which forbids the "[v]iolation of any rule or regulation of the Board[.]"

A reprimand and a fine are usually imposed when a physician falsely answers an application question or questions. In the Matter of Peter Gherardi, M.D., Board of Registration in Medicine, Adjudicatory Case No. 2008-030 (Consent Order, August 20, 2008) (physician reprimanded and fined $5,000 for failing to disclose an arrest on his limited license application and his initial full license application, and for failing to disclose a subsequent arrest on a renewal application); In the Matter of Henri Lamothe, M.D., Board of Registration in Medicine, Adjudicatory Case No. 2009-002 (Consent Order, January 21, 2008) (physician reprimanded and fined $5,000 for failing to disclose one medical malpractice claim on two different renewal applications and another malpractice claim on one renewal application); In the Matter of Samuel B. Wilson, M.D., Board of Registration in Medicine, Adjudicatory Case No. 2007-023 (Consent Order, May 16, 2007) (physician reprimanded and fined $2,500 for disclosing one of two operating under the influence arrests on renewal application); In the Matter of Kingsley Chin, M.D., Board of Registration in Medicine, Adjudicatory Case No. 2005-062 (Consent Order, December 21, 2005) (physician reprimanded and fined $7,500 for failing to disclose on limited license renewal application and full license application that he had been placed on probation during residency; failure to disclose on application for a full license with the state of Florida that he had been placed on probation during residency;

and failing to disclose on Massachusetts full license renewal application that he had been disciplined by the Florida Board of Medicine); In the Matter of Mario F. Moretti, M.D., Board of Registration in Medicine, Adjudicatory Case No. 01-35-DALA (Final Decision and Order, November 20, 2002) (physician reprimanded and fined $7,500 for failing to disclose on renewal application that he had been charged with multiple criminal offenses, including motor vehicle insurance fraud and larceny); In the Matter of Peter K. Harman, M.D., Board of Registration in Medicine, Adjudicatory Case No. 03-17-XX (Consent Order, May 20, 2002) (physician reprimanded and fined $2,500 for failing to disclose on renewal application that he had been disciplined by a health care facility and the Texas State Board of Medical Examiners); and In the Matter of Irene Goranitis, M.D., Board of Registration in Medicine, Adjudicatory Case No. 97-27-DALA (Consent Order, December 17, 1997) (physician reprimanded and fined $5,000 for making false statements on initial license application and four subsequent renewal applications).

A disciplining authority may impose a more severe sanction when the licensee has been previously disciplined for misconduct. In the Matter of Louis M. Saab, 406 Mass. 315, 327-328 (1989) (evidence of past misconduct is "essential in determining the appropriate level of discipline to be imposed in any case."). This Board has previously imposed a more severe sanction against a physician because of the physician's history of past discipline. In the Matter of Ernest Osei-Tutu, M.D., Board of Registration in Medicine, Adjudicatory Case No. 2007-004 (Final Decision and Order, February 25, 2009) (Board deviated from typical sanction taken against a physician for providing substandard care to one patient in part because physician had been previously disciplined by the Board for practicing with a lapsed license).

The Board generally reprimands and fines a physician $2,500 when a physician fails to disclose information regarding one incident on one license application. See In the Matter of Samuel B. Wilson, M.D., Board of Registration in Medicine, Adjudicatory Case No. 2007-023 (Consent Order, May 16, 2007) and In the Matter of Peter K. Harnan, M.D., Board of Registration in Medicine, Adjudicatory Case No. 03-17-XX (Consent Order, May 20, 2002).

A reprimand and $5,000.00 fine is an appropriate sanction. The Respondent failed to disclose on one out-of-state license application that this Board disciplined him for improperly disposing Fentanyl. The Recommended Decision cites Dr. Gaehde's letter, which explains that when the Respondent was interviewed for a position at the Boston V.A. Healthcare System "he immediately disclosed to (sic) that there was an ongoing investigation by the Massachusetts Board of Registration in Medicine regarding an incident at another hospital. Our subsequent routine query to the BORM was negative but we were fully informed of the investigation by Dr. Friedman at the time of his hire. He was very forthright and frank in his description of the events which subsequently were made public by the Massachusetts BORM." The Respondent disclosed on his Massachusetts renewal application that he had been disciplined by the New Hampshire Board for failing to disclose on his New Hampshire application that he had been disciplined by this Board. The Respondent does, however, have one prior disciplinary action in Massachusetts, which was the improper disposal of Fentanyl for which he has been previously reprimanded.

In consideration of these factors, and the Respondent's conduct, the Board hereby REPRIMANDS the Respondent's license to practice medicine and imposes a FINE of $5,000.00, payable within ninety (90) days of this Final Decision and Order. The Board

09/26/14 537

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; the state licensing boards of all states in which he has any kind of license; 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 in the year following the date of imposition of this Final Decision & 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.

Mariane E. Felice, M.D.
Board Secretary

Date: September 24, 2014

SENT CERTIFIED MAIL 9/25/14 (MG)