

COMMONWEALTH OF MASSACHUSETTS

Middlesex, SS.

Board of Registration in Medicine
Adjudicatory Case No. 2022-010

In the Matter of

AARON GELLER, M.D.

FINAL DECISION AND ORDER

Procedural History

The Board initiated this matter by issuing a Statement of Allegations (SOA) against the Respondent on March 11, 2022, and simultaneously referring the SOA to the Division of Administrative Law Appeals (DALA). The SOA ordered the Respondent to show cause why he should not be disciplined for having been disciplined by the New Hampshire Board of Medicine (NH Board) for reasons substantially the same as those set forth at G.L. c. 112, § 5 and 243 CMR 1.03(5).

On September 8, 2022, the Board moved for summary decision,¹ which Respondent opposed on January 13, 2023. On April 19, 2023, the DALA Administrative Magistrate, Kenneth Forton (Magistrate) issued his Recommended Decision (Recommended Decision), concluding that the Board “has proven its Statement of allegations by a preponderance of the evidence.” The Magistrate concluded that the NH Board disciplined Respondent for conduct that would subject him to discipline in Massachusetts. The Magistrate concluded the NH Board’s Final Decision and Order (NH FDO) describes violations substantially similar to disciplinary grounds found in G.L. c. 112, §5 and 243 CMR 1.03(5)(a); in particular, the Board may discipline Respondent for: (a) failing to maintain medical records consistent with 243 CMR 2.07(13)(a); (b) failing to issue prescriptions for controlled substance in accordance with G.L. c. 94C, § 19(a); (c) advertising in a manner that is deceptive or misleading in violation of 243 CMR 2.07(11); and (d) engaging in conduct which places into question Respondent’s competence to practice medicine, including ... negligence on repeated occasions in violation of 243 CMR 1.03(5)(a)(3).

¹ The Magistrate refers to Petitioner’s filing as “its argument and memorandum of law.” The Petitioner submitted the NH FDO, the SOA and a copy of the resignation sent to Respondent.

On June 9, 2023, Respondent filed his Objections to the Recommended Decision (Respondent's Objection),² generally setting forth various reasons for discrediting: (a) the NH Board's legal process and discipline; (b) the DALA for adjudicating the SOA and issuing the Recommended Decision; (c) the Petitioner for prosecuting a complaint based on the NH FDO; or (d) otherwise seeking to relitigate the NH FDO's factual findings. Thereafter on June 14, 2023, Respondent filed his Motion for Bill of Particulars #1 (Motion No. 1) and his Motion for Bill of Particulars #2 (Motion No. 2). Hereinafter, Respondent's Objection, Motion No. 1 and Motion No. 2 are collectively referred to as "Respondent's Objections."

At its meeting on September 21, 2023, the Board reviewed the Recommended Decision, Respondent's Objections and heard from the parties on the issue of sanction. The Board rejects Respondent's Objections.³ Respondent cannot re-litigate the NH Board's findings of fact or appeal the NH Discipline in this forum. Indeed, Respondent has already sought appellate review before the New Hampshire Supreme Court, which held "based upon our review of the board's well-reasoned final decision and order, the relevant law, and the record submitted on appeal, we conclude that the respondent has not demonstrated reversible error regarding any of the board's 11 specific findings of misconduct." *In re Appeal of Geller*, No. 2019-0009 (N.H. Dec. 20, 2019).⁴ The Board hereby adopts the Recommended Decision and incorporates it into its Final Decision and Order.

² On May 18, 2023, Respondent filed his Motion for Extension for Dr. Geller Objection to Kenneth Forton's Recommendation, which was denied.

³ Pursuant to *Arthurs v. Board of Registration in Medicine*, 383 Mass. 299 (1981), the Board is not required to respond to each of Respondent's objections and provide a statement of reasons for either accepting or rejecting. The Board may wish to note that Respondent's objections to the Recommended Decision are without merit and legal support. This adjudicatory proceeding is not the forum for re-litigating or attacking NH Board's findings or otherwise appealing the NH Discipline. The Magistrate found that Respondent "admits that he was disciplined by the New Hampshire Board of Medicine but disputes its findings and conclusions, as well as the discipline it imposed."

⁴ The Magistrate writes, "[t]he New Hampshire Board disciplined Dr. Geller for a number of reasons, including: his inability to properly describe the suprascapular nerve; his failure to obtain a patient's approval before disclosing his medical information; his failure to hold patients' best interests over his own social theories; his failure to order drug screens for patients being treated with opioids; his failure to properly monitor patients on opioid therapy; his misrepresentation of his board certifications; and his failure to properly store and maintain electronic medical records."

Discussion

Pursuant to 243 CMR 1.03(5)(a)12, the Board is authorized 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 M.G.L. c. 112, § 5 or 243 CMR 1.03(5).” See *Ramirez v. Board of Registration in Medicine*, 441 Mass. 479 (2004). The Magistrate found both parties admitted the NH Board had disciplined Respondent. The Magistrate also concluded that the reasons for the NH Board’s discipline “are substantially the same as those that would subject him to discipline in Massachusetts.” Specifically, the Magistrate concluded the Board could discipline Respondent’s license for: (a) engaging in conduct which places into question Respondent’s competence to practice medicine, including ... negligence on repeated occasions in violation of 243 CMR 1.03(5)(a)(3); (b) failing to maintain medical records consistent with 243 CMR 2.07(13)(a); and (c) failing to issue prescriptions for controlled substance in accordance with G.L. c. 94C, § 19(a).⁵

When determining a sanction, the Board is guided by the question of what discipline is necessary to protect the public. *In the Matter of Richard J. Pedro, D.O.*, Board of Registration in Medicine, Adjudicatory Case No. 2018-054 (Final Decision & Order, December 16, 2021) (“[t]he Board tailors its sanction to deter other physicians from engaging in similar misconduct and thereby protect public confidence in the profession”).

The factual findings with respect to Patients 5, 7 and 9 generally describe medical treatment and prescription monitoring that falls below the standard of care. In negligence cases, the Board considers, among other things, the severity of the negligence or degree of deviation from the accepted medical care, the impact of the physician's misconduct, the number of patients affected and any mitigating factors that may be present. See *In the Matter of John C. Clapp, M.D.*, Board of Registration in Medicine, Adjudicatory Case No. 2013-004 (Final Decision & Order, April 16, 2015).

⁵ The Magistrate also concluded the Board may discipline Respondent concerning false and misleading advertising of his certification by the Board of Pain Medicine. In view of the limited findings in the NH FDO and the Recommended Decision concerning this violation, the Board does not base its sanction in this matter concerning Respondent’s lapsed license on his violation of 243 CMR 2.07(11)(a), advertising in a manner that is false, deceptive, or misleading.

In cases involving negligence in the treatment of two or three patients, the Board has admonished,⁶ censured,⁷ or reprimanded⁸ the offending physician's license. See In the Matter of George Hayao, M.D., Board of Registration in Medicine, Adjudicatory Case No. 2020-041 (Final Decision & Order, December 2, 2021)(reprimand and ten (10) continuing professional development (CPD) credits based on prescribing to two patients without conducting physical exams, without communicating with collateral providers, and without maintaining patient records as well as prescribing "inappropriate amounts of oxycodone" to a third patient).

The facts presented in this matter concern Respondent's failure to properly monitor three patients for compliance with prescribed opioid therapy. Respondent's prescribing practices are less severe departures from the standard of care in prescribing than in those instances where the Board has imposed a revocation⁹ or suspension.¹⁰

Respondent was found to have violated patient record keeping requirements. "Record-keeping failures are not 'technical' violations, because accurate and current medical records are absolutely essential in maintaining a patient's health and welfare." In the Matter of Vernon Kellogg, M.D., Board of Registration in Medicine, Adjudicatory Case No. 2007-044 (Final Decision and Order, May 19, 2010). See In the Matter of Joseph V. Thakuria, M.D., Board of Registration in Medicine, Adjudicatory Case No. 2018-046 (Final Decision and Order, August 4, 2022)(reprimand and \$5,000 fine for violating Board regulations on maintenance of patient record, *inter alia*).¹¹

⁶ See In the Matter of Michael N. Weinstein, M.D., Board of Registration in Medicine, Adjudicatory Case No. 88-89-TR (Final Decision and Order, March 7, 1990)(admonishment and semi-annual reports for one year from affiliated hospitals based on substandard care to two patients and maintaining a substandard medical record for a third patient).

⁷ See In the Matter of Franklyn Carrington, M.D., Board of Registration in Medicine, Adjudicatory Case No. 00-18-DALA (Final Decision and Order, December 13, 2000)(censure, 15 continuing professional development credits (CPD) and Probation Agreement, where a physician rendered substandard care to two patients and maintained substandard records for those patients).

⁸ See In the Matter of Constantine D'Emilia, M.D., Board of Registration in Medicine, Adjudicatory Case No. 2018-033 (September 9, 2021)(reprimand of lapsed license with conditions that if physician sought to renew lapsed license, required to complete practice audit with further Board review of results) and In the Matter of Peppino Butera, M.D., Board of Registration in Medicine, Adjudicatory Case No. 2007-025 (Final Decision and Order, December 17, 2008)(reprimand based on substandard care, physician self-remediated by completing internal medicine review course and enrolling in hospital monitoring program in mitigation of Board sanction).

⁹ See In the Matter of Christopher Owens, M.D. Board of Registration in Medicine, Adjudicatory Case No. 2017-031 (Final Decision and Order, April 25, 2018)(revocation based on California discipline for prescribing controlled substances for non-medical purposes to his girlfriend and non-patients known to have substance use disorders).

¹⁰ See In the Matter of Michael Stevens, M.D., Board of Registration in Medicine, Adjudicatory Case No. 2010-019 (Consent Order, August 28, 2010)(indefinite suspension stayed upon entry into a five-year probation agreement for substandard prescribing and falsifying patient medical records).

¹¹ In the Matter of Yashwant S. Chaudhri, M.D., Board of Registration in Medicine, Adjudicatory Case No. 2021-008 (Consent Order, October 22, 2022)(reprimand premised on California discipline for failing to properly maintain a patient medical record).

The gravamen of Respondent's violations concerns his failure to properly monitor his patients' compliance with prescribed opioid therapies and maintain patient records consistent with 243 CMR 2.07(13)(a). The Board has disciplined similar violations of the standard of care and patient record keeping violation with a reprimand. See *In the Matter of George Hayao, M.D.*, Board of Registration in Medicine, Adjudicatory Case No. 2020-041 (Final Decision & Order, December 2, 2021) and *In the Matter of Constantine D'Emilia, M.D.*, Board of Registration in Medicine, Adjudicatory Case No. 2018-033 (Final Decision & Order, September 9, 2021).

It is not clear after the NH Board remediation whether Respondent has acknowledged the deficient monitoring and has altered his prescribing practices in this regard. There is some indication Respondent has not acknowledged sub-standard monitoring,¹² yet according to his offered factors in mitigation, he alleges the NH Board-approved monitor uncovered "no misconduct."¹³

Sanction

Given the findings of fact and conclusions of law set forth in the Recommended Decision, the Board hereby REPRIMANDS the Respondent's inchoate right to renew his license to practice medicine.

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 which 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 with 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

¹² Respondent maintains that "Discipline was unlawfully prejudged as the NH BOM fully knew that I engaged in zero misconduct (see attached summary) with all untruthfully decreed "findings of "fact"" to truly be fictions (see attachments). Speaking through both sides of their mouth, whilst the Mass. BOM states that it does not matter if the NH BOM's malevolently decreed fictitious "facts" were fully disproven, they state that the law requires that it be proven that the reasons / facts were a violation of Mass. law if they occurred in Mass.. As no "facts" of misconduct occurred in NH, none exist for presentation as "proof" to the Mass. BOM. The Mass. BOM's pursuit of discipline is groundless and so, illegal." Respondent's Objection at 25.

¹³ Recommended Decision at 9.

such designated entities with which he becomes associated for the duration of this suspension or subsequent Probation Agreement. 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 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.

A handwritten signature in black ink, appearing to read 'Julian Robinson', with a long horizontal line extending to the right.

DATE: September 21, 2023

Julian Robinson, M.D.
Chair