

COMMONWEALTH OF MASSACHUSETTS

MIDDLESEX, SS

BOARD OF REGISTRATION
IN MEDICINE

Adjudicatory Case 2020-047
(RM-20-0452)

In the Matter of)
)
)

Clark E. O'Brien, M.D.)
_____)

FINAL DECISION AND ORDER

Procedural History

The Board initiated this matter by issuing a Statement of Allegations (SOA) against the Respondent on November 5, 2020 and referring the matter to the Division of Administrative Law Appeals (DALA). The DALA Magistrate conducted a prehearing conference on December 7, 2020. The Board filed a Motion for Summary Decision on March 15, 2021. On July 22, 2021, the Magistrate issued a Recommended Decision on Motion for Summary Decision to the Board and to the Parties. The Parties did not file objections to the Recommended Decision. The Board hereby adopts the Recommended Decision and incorporates it into its Final Decision and Order.

Discussion

The Recommended Decision adopted by the Board concludes that there is no material issue in dispute as to whether the Respondent failed to respond to the Board's repeated requests for information in violation of 243 CMR 1.03(5)(a)(16). In so doing, the Respondent engaged in conduct that undermines the public confidence in the integrity of the medical profession. *Raymond v. Board of Registration in Medicine*, 387 Mass. 708, 713 (1982) (disciplining

physicians for lack of good moral character and for conduct that undermines public confidence in integrity of profession is reasonably related to promotion of public health, welfare, and safety.)

While the Respondent has allowed his license to lapse, the Massachusetts Supreme Judicial Court has found that physicians maintain an inchoate right to renew their licenses, following lapse for failure to renew, and that the Board retains jurisdiction over them. See Wang v. Board of Registration in Medicine, 405 Mass. 15, 18-19 (1989).

The record demonstrates that the Federation of State Medical Boards (FSMB) notified this Board that the Respondent had entered into a Voluntary Agreement not to Renew or Reinstate his License (VANRR) with the Connecticut Department of Public Health (Connecticut Board) to resolve Connecticut Board Petition No. 2019-1028, based on allegations that the Respondent:

- a. in April of 2019, was arrested for attempting to purchase cocaine;
- b. in May of 2019, agreed to undergo random drug screens through the HAVEN program¹; and
- c. on August 27, September 4, and September 5, 2019, submitted urine samples which tested positive for cocaine metabolites.

The record demonstrates, too, the Respondent knew of this Board's docketed complaint against him and request for a written response concerning the VANRR after his October 16, 2019 call with a Board Investigator. The Respondent provided no written response until the Board issued a Statement of Allegations (SOA), charging the Respondent with a failure to respond, and referred this matter to the Division of Administrative Law Appeals (DALA) on November 6, 2020.

When the Respondent ultimately filed an Answer to the SOA, on December 12, 2020, he still did not address the Board's allegations as to his failure to respond to the Board's repeated

¹ The HAVEN program is akin to Physician Health Services' (PHS) physician monitoring program.


a physician's "utter disregard for the Board's statutory mandate" to protect the public health, safety, and welfare.

In the absence of any mitigating factors to the Respondent's non-responsiveness in the pending matter, the Board REVOKES the Respondent's inchoate right to renew his license to practice medicine in the Commonwealth.

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 to practice medicine. The Respondent shall also provide this notification to any such designated entities with which he becomes associated for the duration of this revocation. 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 notify independently, 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.

DATE: _____
December 16, 2021



Julian N. Robinson, M.D.
Chair