

COMMONWEALTH OF MASSACHUSETTS
BOARD OF REGISTRATION IN MEDICINE

MIDDLESEX, SS

Adjudicatory Case No. 2015-037
(RM-15-648)

)
In the Matter of)

)
Sheldon Schwartz, M.D.)
_____)

FINAL DECISION AND ORDER

This matter came before the Board for disposition on the basis of the Board of Registration in Medicine's April 8, 2021 Partial Final Decision and Order as to Findings of Fact and Conclusions of Law Only (Partial Decision), incorporating the Administrative Magistrate's December 29, 2020 Recommended Decision. After full consideration of the Partial Decision, which is attached hereto and incorporated by reference and the Parties' Memoranda on Disposition, the Board adds the following:

Sanction

The record demonstrates that the Respondent has engaged in conduct that undermines public confidence in the integrity of the medical profession and has engaged in misconduct in the practice of medicine. 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).

The record reflects that the Respondent, an internist at Arbour-HRI Hospital (the Arbour) between 2005 and 2013, engaged in disruptive behavior on two days, three months apart, in 2013. On February 28, 2013, the Respondent, in the course of voicing patient safety concerns associated with continuing admissions while the electronic medical record system was down, called one administrator (Administrator 1) "a bitch" and told a second administrator (Administrator 2) that she was "corporate now" and he could "buy and sell [her] a million times." The Respondent apologized to patients in a group therapy session when told they could hear him speaking with Administrator 1.

On May 30, 2013, the Respondent, when asked to move from an examination room that also served as his office, and where he was entering orders, so that mental health workers could perform a “johnny search,” said “No.” Later that day, the Medical Director and the Respondent argued loudly in front of the nurses’ station. When the Respondent was told that a patient could hear them, the Respondent said, “I don’t care.” The following day, the Respondent admitted that he had been disruptive and apologized to the mental health workers.

This Board recognized the association between disruptive behavior and patient safety long before adopting Board Policy Number 01-01 “Disruptive Physician Behavior.” See *In the Matter of Kwok Wei Chan, M.D., and Mohan Korgaonkar, M.D.*, Board of Registration in Medicine, Adjudicator Case No. 94-20-XX (Consent Judgment, November 17, 1993)(the Board admonished, fined, and required joint therapy for two physicians who swore, threw an instrument, and scuffled briefly in an operating room). See also *In the Matter of Umer Sayeed-Shah, M.D.*, Board of Registration in Medicine, Adjudicatory Case No. 00-22-XX (Consent Order, June 14, 2000)(the Board admonished and fined a physician who had engaged in a long standing dispute about various hospital policies, had been placed on probation by the hospital, and discharged his frustrations on a patient’s family member, a janitor, and a physician who failed to call for a consultation.)

The Board has imposed sanctions ranging from admonishment to license suspension for disruptive conduct. The Board has consistently considered: the nature and number of disruptive acts, patterns in a physician’s misconduct, and the context of the disruptive acts.

The Board has imposed an admonishment, when a physician who struck another physician and a nurse on the back during an operation intending to restore quiet in the operating room for the well-being of the patient. See *In the Matter of James Philip, M.D.*, Board of Registration in Medicine, Adjudicatory Case No. 2008-046-DALA (Final Decision and Order, March 16, 2011).

The Board most often imposed a reprimand for disruptive behavior and has imposed this sanction in wide-ranging circumstances, including: i) a case where a physician, frustrated by his facility’s admitting patients he believed should be transferred

to other hospitals, refused to go into the hospital when contacted by nurses. See *In the Matter of Timothy Soul-Regine, M.D.*, Board of Registration in Medicine, Adjudicatory Case No. 2013-042 (Consent Order, September 11, 2013); and ii) a case where a physician engaged in disruptive behavior on four separate occasions, including one where he threatened violence, but had completed a behavioral assessment, engaged in psychotherapy, and completed a course in workplace conflict prior to the imposition of discipline. See *In the Matter of Paul Silverstein, M.D.*, Board of Registration in Medicine, Adjudicatory Case No. 2007-066 (Consent Order, December 19, 2007).

In some instances, the Board has imposed indefinite suspension of a physician's license based on disruptive behavior and allowed a petition to stay the suspension upon the physician's entry into a Probation Agreement. See e.g., *In the Matter of Peter J. Mulhern, M.D.*, Board of Registration in Medicine, Adjudicatory Case Nos. 2005-007 and 2005-046 (Final Decision and Order, September 5, 2007)(the Board suspended the physician's inchoate right to renew his license and conditioned a petition to stay on the physician's demonstrate his fitness to practice and entering a Probation Agreement, where the physician's disruptive behavior included multiple acts on multiple days and included his throwing a sandbag in anger and injuring a co-worker's foot, and threatening to punch another physician).

When determining the appropriate sanction, the Board has considered a physician's history of "past misconduct essential in determining the appropriate level of discipline to be imposed." See *In the Matter of Saab*, 406 Mass. 315, 327-328 (1989). In the pendant case, the Board disciplined the Respondent in 2012 based on conduct mirroring his 2013 disruptive behavior. See *In the Matter of Sheldon Schwartz, M.D.*, Board of Registration in Medicine, Adjudicatory Case No. 2012-024 (Consent Order, September 19, 2012)(the Board reprimanded the Respondent for December 2010 conduct, which included his placing his hand on the arm of the nursing supervisor and removing her from the room where he was entering patient orders and which she needed to examine a patient and later arguing in the presence a patient).

When determining the appropriate sanction in this matter, the Board acknowledges the Respondent is "an excellent clinician...[who] believes in the

paramount importance of patient safety.”¹ The Board observes, however, the Respondent’s repeated use of aggressive behavior (swearing, verbally belittling, and using physical contact) when attempting to resolve systemic conflicts (a malfunctioning records system and the mixed use of a room for entry of patient orders and “johnny searches”) and his difficulty in resolving them through other mechanisms. The Board notes that the pattern continued following the Respondent’s prior discipline by the Board for like behavior.

The Board acknowledges mitigating factors in this matter, namely: i) the Arbour “was a troubled workplace on many levels”² and the Respondent’s behavior “was more of a symptom of larger problems than the cause;”³ and ii) the Division of Administrative Law Appeals closed the record in this case on October 17, 2016 and issued a Recommended Decision on December 29, 2020.

Based on the pattern in the Respondent’s use of aggression and past Board discipline, and in light of the mitigating factors identified, the Board hereby INDEFINITELY SUSPENDS the Respondent’s license to practice medicine. Any petition to stay the suspension is conditioned upon the Respondent’s documenting his completion of: i) a new evaluation by Physician Health Services (PHS) and following all recommendations made by PHS; ii) a Board-approved course in anger management; and iii) a Board-approved course in conflict management. The sanction is imposed for each violation of the law, and not a combination of any or all of them.

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 –

¹ See Recommended Decision at p. 25.

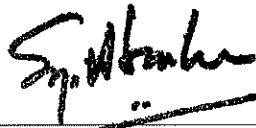
² Id.

³ Id.

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 and Order. The Respondent is further directed to certify to the Board within ten (10) days that s/he has complied with this directive.

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: May 20, 2021

A handwritten signature in black ink, appearing to read "George Abraham", written over a horizontal line.

George Abraham, M.D., M.D.
Chair