

COMMONWEALTH OF MASSACHUSETTS  
BOARD OF REGISTRATION IN MEDICINE

MIDDLESEX, ss

Adjudicatory Case No. 2022-012  
(DALA No. RM-22-141)

In the Matter of )  
 )  
Walter M. Simmons, M.D. )  
 )

FINAL DECISION AND ORDER

Procedural History

On March 31, 2022, the Board issued Statement of Allegations (SOA) charging Walter M. Simmons, M.D. (the Respondent) with having pleaded guilty to three counts of Wrongful Use of a Unique Health Identifier, in violation of 42 U.S.C. § 1320d-6(a)(1),(b)(1), and having been disciplined by the Tennessee Board of Medical Examiners based on the criminal conviction. This Board alleged that, based on the criminal conviction and out-of-state discipline, the Respondent could be disciplined. The Board referred the SOA to the Division of Administrative Law Appeals (DALA) for further proceedings.

On June 29, 2022, Complaint Counsel<sup>1</sup> filed a Motion for Summary Decision<sup>2</sup> pursuant to 801 CMR 1.01(7)(h). On August 15, 2022 DALA Magistrate Yakov Malkiel issued an Order on Motion for Summary Decision and ruled that “there [was] no genuine issue of fact” with respect to the Board’s charges that the Respondent could be disciplined for: having been criminally convicted<sup>3</sup>; having been disciplined in another jurisdiction for reasons substantially similar to bases for discipline set forth in this Board’s statute and regulations<sup>4</sup>; and having engaged in conduct that demonstrates a lack of good moral character and undermines public confidence in the integrity of the medical profession.<sup>5</sup>

<sup>1</sup> Complaint Counsel Stephen C. Hctor represents the Board. The Respondent is pro se.

<sup>2</sup> When a Party is of the opinion that there is no genuine issue of fact relating to one or more of the claims, he may move for summary decision as to the claim(s). 801 CMR 1.01(7)(h).

<sup>3</sup> Conviction for a criminal offense is a basis for discipline pursuant to G.L. c. 112, §5, ninth par. (g) and 243 CMR 103(5)(a)3.

<sup>4</sup> Having been disciplined by a licensing authority in another jurisdiction for reasons substantially the same as grounds for discipline in this Board’s statute or regulations is a basis for discipline pursuant to G.L. §5 or 243 CMR 1.03(5) to wit: G.L. c. 112, §5(g) and 243 CMR 1.03(5)(a)(7).

<sup>5</sup> Engaging in conduct that demonstrates a lack of good moral character and undermines the public’s confidence in the integrity of the medical profession is a basis for discipline 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).

Shortly thereafter, Complaint Counsel withdrew the remaining alleged bases for discipline<sup>6</sup> and moved for the issuance of a Recommended Decision authorizing the Board to impose discipline on the Respondent's license.

On September 22, 2022, the Magistrate issued a Recommended Decision, which is attached hereto and incorporated by reference. Neither Party filed Objections to the Recommended Decision.

After full consideration of the Recommended Decision, the Parties' Memoranda on Disposition, and the Respondent's Defense together the exhibits submitted therewith, the Board adopts the September 22, 2022 Recommended Decision and incorporates it into this Final Decision and Order.

#### Discussion and Sanction

The record indicates that, in July 2021, the Respondent pleaded guilty in the U.S. District Court for the Northern District of Texas to three counts of Wrongful Use of a Unique Health Identifier. 42 U.S.C. § 1320d-6(a)(1), (b)(1), an offense that is committed when a person knowingly uses personal health information in violation of HIPPA. The Respondent admitted specifically to obtaining three patients' personal information and writing prescriptions, in 2014, in those patients' names. Based on his guilty plea, the federal court sentenced the Respondent to nine months in federal prison.

The Board has stated, "[A]ny criminal behavior is 'antithetical to a commitment to preserve life, alleviate suffering, and restore health.'" See In the Matter of John J. Diggins, M.D., Board of Registration in Medicine, Adjudicatory Case No. 2021-021 (RM-21-175) (DALA Recommended Decision at p. 10, January 21, 2022).

The record further indicates that the Respondent entered into a Consent Order with the Tennessee Board of Medical Examiners, based on: i) the criminal conviction; ii) a finding that the Respondent engaged in "unprofessional, dishonorable or unethical conduct," pursuant to Tenn. Code Ann. §63-6-214(b)(1); and iii) a criminal conviction of "a felony,...any offense...relative to

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<sup>6</sup> The SOA also included charges of: i) engaging in conduct that places into question a physician's competence to practice medicine, pursuant to G.L. c. 112 §5 eighth par. (c) 243 CMR 1.03(5)(a)(3); ii) committing misconduct in the practice of medicine, pursuant to 243 1.03(5)(a)(18); and iii) conviction of a criminal offense that calls into question the ability to practice medicine, pursuant to G.L. c. 112 §5, ninth par. (g).

drugs or the practice of medicine,...[or] any offense involving moral turpitude.” Id. §63-6-214(b)(10).

In cases of HIPAA violations, the Board considers a physician’s intent in viewing a record without authorization and the use of the information that is obtained. Where, for instance, a physician gained unauthorized access to the medical records of two peers, neither of whom was a patient, and without a legitimate purpose, the Board imposed a reprimand. See In the Matter of Allison August, M.D., Board of Registration in Medicine, Adjudicatory Case No. 2009-015 (Consent Order, May 20, 2009). In contrast, where a physician’s wife (also a physician) illegally gained unauthorized access to patients’ medical records to obtain information to assist her physician spouse in his defense of charges of wrong-doing, the Board imposed an indefinite suspension and fine. See In the Matter of Deborah Sichel, M.D., Board of Registration in Medicine, Adjudicatory Case No. 02-58-DALA, Final Decision and Order, September 1, 2004). Notably, neither *August* nor *Sichel* involved a physician’s gaining unauthorized access through criminal conduct.

The Respondent requested that the Board consider information concerning his background and the events surrounding his wrong-doing. The Board gives preclusive effect to decisions of other state medical boards with respect to the conduct found or determined to have occurred and will not amend the Recommended Decision to alter the factual determinations made in those decisions. See Ramirez v. Board of Registration in Medicine, 441 Mass. 479, 482-483 (2004) (where a physician entered into consensual discipline in a foreign jurisdiction, the board need not be burdened with trying the case); *Haran v. Board of Registration in Medicine*, 398 Mass. 571, 575 (1986) (where a physician’s license was revoked by a foreign jurisdiction, the physician had no right to ‘disprove’ findings of negligence and professional incompetence before the board).

However, the Board does consider mitigating and aggravating information in Memoranda on Disposition and accompanying documents to determine an appropriate sanction to impose. See Lawless v. Bd. Of Registration in Pharmacy, 466 Mass. 1010, 1011, 996 N.E.2d 878, 880 (2013) (final decision and sanction may be based on information in the administrative record).

In his Defense, the Respondent reports that, as a favor to marketing company executives, who served as investors in his business, he received unique health identifiers for veterans, who were not his patients, formed physician-patient relationships with the veterans, prescribed

medications for the veterans, and furnished the prescriptions to the marketing company's staff, who were not authorized to receive them. These prescriptions were then filled, and the marketing company billed the government payor TRICARE. He seeks credit for later assisting the government in its proceeding against the investors. What he does not do is demonstrate remorse or any insight about the wrongful nature of his conduct: reaching out to veterans to gain their medical information in order to generate prescriptions so that his investors might bill the government. Rather, he describes his participation as a "personal favor" to his investors.

The Respondent also suggests that that Board consider his past military service, subsequent service to veterans with addiction, and assistance to the government in uncovering a conspiracy to defraud a government payor in violation of the Anti-Kickback Statute, 42 USC §1320a. The Board determines that that the Respondent's past military service and subsequent service to veterans is undermined, as a mitigating factor, by the Respondent having effectively exploited members of the population that he requests credit for serving.

The Board considers the Respondent's engaging in wrong-doing under the guise of practicing medicine an aggravating factor. On the basis of the Respondent's criminal conviction, the presence of an aggravating factor, and the Respondent's absence of insight and expression of remorse, the Board hereby REVOKES the Respondent's license to practice medicine in Massachusetts.

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 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 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, and G.L. c. 112, § 64.

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

Date: February 2, 2023

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Julian Robinson, M.D. Chair  
Board of Registration in Medicine