

KERSTEIN, COREN & LICHTENSTEIN LLP

Attorneys at Law

60 Walnut Street
Wellesley, MA 02481

Andrew L. Hyams
Admitted to Practice: MA & NY
Direct Dial: (781) 997-1566

TEL: (781) 997-1600
FAX: (781) 997-1633
ahyams@kcl-law.com

By email to Eileen.Prebensen@state.ma.us

February 20, 2020

Eileen Prebensen, Senior Policy Counsel
Board of Registration in Medicine
200 Harvard Mill Square, Suite 330
Wakefield, MA 01880

Re: 243 CMR 2.06(7)(b)(3), Revising a Lapsed License

Dear Ms. Prebensen:

The above-captioned emergency regulation was promulgated in response to Justice Budd's September 4, 2019 Reservation and Report, *Bock v. Board of Registration in Medicine*, SJ-2019-0210. Dr. Bock was represented by the undersigned and Kenneth Kohlberg, Esq.

Dr. Bock argued to the Single Justice, in part, that during his summary suspension period, the Board failed to send him a renewal application form, which it was legally obligated to do, and which it had always done for Dr. Bock prior to the summary suspension. *See* G.L. c. 112, § 2 ("The board shall mail a renewal application to each registered physician sixty days prior to the renewal date.").

Justice Budd, in her Reservation and Report, asked the parties to brief certain questions, of which one was "what is the board's rationale for distinguishing between, and treating differently, individuals whose licenses happen to expire during a period of interim suspension and those for whom an interim suspension is lifted prior to their renewal date?"

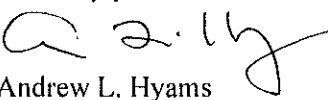
The Board's emergency regulation is problematic, because:

- 1) It does not comply with the above-cited language in G.L. c. 112, § 2; and
- 2) It continues to "distinguish between" and "treat differently" the two classes of physicians described in Justice Budd's question.

The Board can fully protect the public and accomplish its mission by renewing a license in compliance with G.L. c. 112, § 2, and simultaneously imposing a temporary suspension under the Board's summary suspension regulation, 243 CMR 1.03(11).

Thank you for the opportunity to comment.

Sincerely yours,


Andrew L. Hyams