

**COMMONWEALTH OF MASSACHUSETTS
DIVISION OF ADMINISTRATIVE LAW APPEALS**

June 21, 2024

Middlesex, ss.

Docket No. RM-21-0174

BOARD OF REGISTRATION IN MEDICINE, Petitioner

v.

ROOZBEH BADI, M.D., Respondent

RECOMMENDED DECISION

Appearance for Petitioner:

James Paikos, Esq.
Complaint Counsel
Board of Registration in Medicine
178 Albion Street, Suite 330
Wakefield, MA 01880

Appearance for Respondent:

Dr. Roozbeh Badi, pro se
449 B Ave.
Coronado, CA 92118

cc:

Richard R. Brown, Esq.
Att: Ms. Shanel Banks, Adm'v Assistant
Brown, Paindiris & Scott, LLP
100 Pearl St., 2nd fl.
Hartford, CT 06103

Administrative Magistrate:

Mark L. Silverstein, Esq.

Summary of Decision

Physician Discipline - Recommended Decision - Reciprocal Discipline based upon out-of-state physician discipline - Prior partial summary decision on remaining allegations - No remaining facts or legal issues to be determined at DALA.

In view of (1) the prior summary decision, in the Board of Registration in Medicine's favor, of its remaining allegations against a physician based upon out-of-state discipline on grounds supporting reciprocal physician discipline in the Commonwealth; and (2) no response by the physician to a prior order directing him to show why DALA should not now issue a Recommended Decision allowing the Board to determine what discipline should be imposed, the Recommended Decision is now issued in the absence of any remaining facts or legal issue to be determined at DALA.

Background

This physician discipline-related proceeding commenced, on April 23, 2021, when the Massachusetts Board of Registration in Medicine referred its April 22, 2021 Statement of Allegations against respondent Dr. Roozbeh Badii to the Division of Administrative Law Appeals (DALA) for recommended findings of fact and necessary conclusions of law. The Board's Statement of Allegations directed Dr. Badii to show cause why he should not be disciplined in Massachusetts (1) for improperly prescribing, in the course of his telemedicine practice, prescription medications and equipment to members of two Massachusetts health care plans (Board Allegations 2-25); and (2) based upon discipline imposed upon him in other states, including Maryland and Connecticut, on grounds that would support physician discipline in Massachusetts pursuant to M.G.L. c. 112, § 5 or 243 C.M.R. § 1.03(5), including failure to cooperate with medical board of registration board investigations of Dr. Badii's telemedicine practice, and findings that Dr. Badii was professionally,

physically or mentally incompetent to practice medicine (Board Allegations 26-39).

Per the Board's Statement of Allegations, Dr. Badii is a 2002 graduate of the George Washington University School of Medicine and Health Science. He is board-certified in internal medicine, and held a license to practice medicine in Massachusetts that lapsed in September 2017 because he did not renew it. (Allegation 1.) As of April 2021, Dr. Badii maintained a telemedicine practice and resided in California, where he had an active medical license; he also held active medical licenses in Connecticut, Indiana and New York. (*Id.*) Dr. Badii held a Drug Enforcement Administration license (needed to prescribe controlled substances) that expired on July 31, 2019. (*Id.*)

The first part of the Board's Statement of Allegations concerned medical practice violations that affected Massachusetts patients specifically. In Allegations 2-25, the Board alleged that in the course of his telemedicine practice in 2016, Dr. Badii prescribed, to members of the Tufts Health Plan and Blue Cross Blue Shield of Massachusetts, high-cost compounds or topical medications¹ as well as aerosol sprays and durable medical equipment such as TENS Units and knee and back braces, without conducting an appropriate physical and/or mental examination and recording the examination results for any of the patients in question. For two of those patients, Dr. Badii allegedly prescribed medications the patient did not order; the patients each received these medications from a pharmacy in Texas, and was billed a low co-pay amount; and Tufts Health Blue Cross Blue Shield

¹/ Including Doxepin (used to treat anxiety, depression and insomnia), Fluocinonide (a corticosteroid medication used to treat skin conditions that may cause itching, redness, and inflammation), lidocaine (a local anesthetic), and diclofenac sodium (a nonsteroidal anti-inflammatory drug used to reduce pain, swelling and joint stiffness from arthritis).

were allegedly billed a more substantial price.

The remaining allegations (Allegations 26-39) asserted out-of-state physician discipline as the basis for imposing reciprocal discipline upon Dr. Badii in Massachusetts.

Allegations 26-36 concerned Dr. Badii's discipline by the Maryland State Board of Physicians on April 20, 2020, following that Board's investigation into his telemedicine prescribing practices. One of the grounds for this discipline was failure to cooperate with that investigation. In response to the Maryland Board's subpoena, Dr. Badii produced medical records for only one of ten telemedicine patients the subpoena specified, and he did not appear before the Maryland Board for an interview. The Maryland Board also investigated Dr. Badii's mental competency to practice medicine, which included a review by a Board-approved forensic psychiatrist of Dr. Badii's patient records, and records from his divorce proceeding. The Maryland Board's consulting psychiatrist concluded that Dr. Badii was unable to practice medicine safely due to his anger, irritability, impulsivity, poor insight, and poor judgment. In its April 20, 2020 Final Decision and Order, the Maryland Board found that Dr. Badii had failed to cooperate with its investigation, and was professionally, physically, or mentally incompetent to practice medicine.

In Allegations 37-39, the Board alleged that on February 26, 2021, the Connecticut Medical Examining Board investigated allegations that Dr. Badii "had certain mental conditions that, if not appropriately managed [did or may] affect his practice as a physician and surgeon," resulting in a consent order based upon this impairment.

The Board asserted that the Maryland and Connecticut orders established facts upon which it could impose discipline, pursuant to M.G.L. c. 112, § 5 or 243 C.M.R. § 1.03(5), including failing

to cooperate with a state medical licensing board investigation, and professional, physical or mental incompetence. The Board's statement of allegations asserted that Dr. Badii was subject to discipline in Massachusetts on the following grounds:

(1) Engaging in conduct that placed into question his competence to practice medicine, including but not limited to gross misconduct in the practice of medicine, or practicing medicine fraudulently or beyond its authorized scope, or with gross incompetence, or with gross negligence on a particular occasion or on repeated occasions, in violation of M.G.L. c. 112, § 5 and 243 C.M.R. § 1.03(5)(a)(3);

(2) Lacking good moral character and engaging in conduct that undermines the public confidence in the integrity of the medical profession, *citing Raymond v. Bd. of Registration in Medicine*, 387 Mass. 708, 443 N.E.2d 391 (1982), and *Levy v. Bd. of Registration*, 378 Mass. 519, 392 N.E.2d 1036 (1979);

(3) Violating the following Board of Registration in Medicine rules or regulations:

(a) Board Policy 03-06 on internet prescribing, which requires that there be a physician-patient relationship, and that the physician conform to certain minimum norms and standards; such as taking an adequate medical history, and conducting an appropriate physical and/or mental status examination and recording the results;

(b) 243 C.M.R. § 2.07(13)(a), which requires that a physician maintain records for each patient that is adequate to enable the medical license holder to provide proper diagnosis and treatment;

(4) Having been disciplined in another jurisdiction in any way by the proper licensing authority for reasons substantially the same as those set forth at M.G.L. c. 112, § 5 or 243 C.M.R. § 1.03(5), specifically:

(a) Practicing medicine while his ability to do so was impaired by alcohol, drugs, physical disability or mental instability, in violation of M.G.L. c. 112, § 5, eighth para. (D), and 343 C.M.R. § 1.03(5)(a)4; and

(b) Failing to respond to a subpoena, or to furnish the [out-of-state] Board, its investigators or representatives, documents or information to which that Board was legally entitled.

(Bd. Statement of Allegations at 7-8.)

Dr. Badii filed an answer to the Board's statement of allegations on June 7, 2021. He claimed, among other things, that:

(a) He had issued no prescriptions for Tufts or Blue Cross Blue Shield members unless he had first conducted an appropriate telemedicine examination and properly assessed the medical need for the medications and equipment in question;

(b) His former wife, a pharmacist, forged his signature on prescriptions, conduct that had led him to file a fraud complaint against her with the San Diego, California police department on March 20, 2017;

(c) His former wife had also initiated a freeze on all prescriptions he had issued through various service providers, and filed a report against him with the Massachusetts Board of Registration in Pharmacy; and may have misappropriated and/or destroyed any medical records he maintained at the marital home;

(d) His former wife's conduct was the reason he did not, and could not, produce records in response to the Maryland Board's subpoena;

(e) Because he had appealed the Maryland Board's order, and the appeal remained pending before the Maryland Court of Special Appeals, that order, including the facts found

by the Maryland Board, could not be the basis for disciplining him in Massachusetts; and

(f) Following a comprehensive psychiatric and psychological examination ordered by the California Board of Medicine and conducted by a Board-approved forensic psychiatrist, the psychiatrist had found (on or about December 2, 2020) that Dr. Badii was being "treated appropriately" and was able to practice medicine safely and effectively if he maintained the appropriate treatment.

(Answer at paras. 2, 28, 29, 34, 36 and 37).

Dr. Badii also asserted in his Answer, as affirmative defenses, that he was being disciplined in Massachusetts on the basis of non-final out-of-state charges; and for his mental disability, in violation of Title II of the American with Disabilities Act, 42 U.S.C. § 12131 *et seq.* He also asserted that the delay in bringing charges against him for conduct that occurred several years earlier (between 2014 and 2017) had impaired his ability to defend against those charges and, as a result, had violated his due process rights to a fair and objective administrative process. (Answer at 7-8.)

I held a prehearing conference by telephone on June 24, 2021, with counsel for the Board and Dr. Badii participating. Both parties requested time to complete ongoing discussions regarding the possibility of resolving this proceeding by agreement; and to complete voluntary disclosure of materials including a Maryland psychiatrist's report regarding Dr. Badii's mental condition. The Board and Dr. Badii also confirmed that the Maryland Board's Order remained on appeal, with no certain date by which the Maryland Court of Special Appeals would decide it. They agreed that it would be helpful to continue settlement efforts and attempt to complete voluntary discovery. I allowed additional time to pursue these efforts, and ordered the parties to file status reports regularly,

which the parties did initially starting on December 22, 2021.

On April 14, 2022, the parties reported that Dr. Badii's medical licenses had also been suspended and/or revoked in Ohio and California, and that Dr. Badii had appealed this discipline to the medical boards of each of those states. The parties also reported that the resolution of the Ohio and California discipline appeals might lead to a disposition of the Massachusetts allegations against Dr. Badii as well.

On November 7, 2022, the Board filed a motion to dismiss allegations 2 through 25 of its 2021 Statement of Allegations against Dr. Badii (asserting that he had prescribed high-cost compounds or topical medications, and prescription equipment, to Tufts Health Plan and Blue Cross Blue Shield of Massachusetts members) by withdrawing them. The Board stated that it wished to withdraw these allegations because it "anticipate[d] that this will streamline and expedite the proceedings," and that it would be moving separately for partial summary decision as to the remaining allegations (allegations 26-39, regarding the Maryland and Connecticut disciplinary actions against Dr. Badii).

The Board filed its motion for partial summary decision on the same day. Among other things, the Board asserted that the Maryland and Connecticut disciplinary actions had become final, the latter upon a consent order signed by Dr. Badii and the Connecticut Medical Examining Board in early 2021, and the former as a result of the Maryland Special Court of Appeals decision affirming the Maryland State Board of Physicians' Final Decision and Order. *See Badii v. Maryland State Bd. of Physicians*, No. 1038, ___ A.2d ___ (Md. Ct. Spec. App., Aug. 13, 2021)(unreported). The motion for partial summary decision included a copy of the 2021 Connecticut consent order, and of

the Maryland appellate decision.

On November 23, 2022, Board Complaint Counsel reported having been authorized by Dr. Badii's counsel "to represent that the Respondent does not intend to oppose either of the Petitioner's motions." No further filings followed regarding the status of the parties' efforts to resolve this matter.

In view of this history I issued, on April 19, 2024, an order in which I granted the Board's unopposed motions. As a result:

(1) Allegations 2 through 25 of the Board of Registration in Medicine's April 22, 2021 Statement of Allegations against Dr. Badii were dismissed as withdrawn;

(2) A partial summary decision was granted in the Board's favor as to the remaining Allegations (26 through 39), which concerned Dr. Badii's discipline in Maryland and Connecticut. As a result, the facts underlying physician discipline against Dr. Badii in both states and recited in the Board's April 22, 2021 Statement of Allegations (at Allegations 26-39) became the facts found in this proceeding, and would be the facts upon which the Board could impose discipline upon Dr. Badii pursuant to M.G.L. c. 112, § 5 or 243 C.M.R. § 1.03(5), once a Recommended Decision was issued here.

My April 19, 2024 order identified several matters for the parties to clarify in their subsequent report before I could issue a Recommended Decision. One was whether they had reached an agreement, or now expected to be able to do so, resolving discipline relative to Board allegations 26 through 39, the only allegations that remained for imposing discipline. If the parties had reached a resolution by agreement, the second unresolved issue was whether I should recommend that this

proceeding be dismissed for mootness, while specifying whether or not Dr. Badii retained his inchoate right to renew his lapsed Massachusetts medical license. *See, e.g., Bd. of Registration in Medicine v. Shenker*, Docket No. RM-19-0070, Recommended Decision - Order of Dismissal (Mass. Div. of Admin, Law App., Sept. 23, 2021).²

The Board filed a timely response to the April 19, 2024 order. Board Complaint Counsel reported that Dr. Badii was now representing himself, and had not responded to a proposed joint status report he had sent to the doctor. Complaint counsel also stated that based upon prior emails from the petitioner prior to May 24, 2024 (meaning, presumptively, from Dr. Badii and/or the attorney who was then representing him), a resolution of this matter by agreement was not possible.

^{2/} On the same day I issued the Order (April 19, 2024), Board Complaint Counsel forwarded an "automated response" he had received from the law firm representing Dr. Badii (Brown, Paindiris & Scott, LLP of Hartford, Connecticut). It stated that the attorney who was handling the matter at the firm (Cody N. Guarnieri, Esq.) had been nominated by the Governor of Connecticut to serve as a Justice of that state's Superior Court and therefore could no longer respond to communications regarding this matter (including, apparently, the April 19, 2024 Order, although DALA's emailing of that Order had not generated this reply to DALA directly). Board Complaint Counsel also stated that he had spoken with an unidentified person at Brown, Paindiris who had confirmed that Dr. Badii was representing himself. Complaint Counsel also confirmed that he had forwarded my April 19, 2024 Order to Dr. Badii via email.

The Connecticut law firm had not filed with DALA any notice of withdrawal in this matter. In addition, the firm's automated reply email to Board Complaint Counsel stated that "all inquiries" were to be directed to another attorney at Brown, Paindiris (Attorney Richard R. Brown) and to his administrative assistant. To assure that Attorney Brown and his firm had actual notice of the April 19, 2024 Order, I reissued it later that day by email to Attorney Brown and to his administrative assistant, as well as to Board Complaint Counsel. The reissued Order did not change the deadline for filing responses to it (May 24, 2024) or make any other substantive changes. As the Connecticut firm has still filed no withdrawal, a courtesy copy of this Recommended Decision is being sent to Attorney Brown.

Board Complaint Counsel requested “that a Recommended Decision be issued in this matter based on the findings in the April 19, 2024 Order on the Board’s motions to dismiss Allegations 2-25, and for summary decision on the remaining Allegations (26-39). He asserted that since the disciplinary actions against Dr. Badii in Connecticut and Maryland had become final, they sufficed for Massachusetts physician discipline purposes, and there was no need to determine the status of disciplinary proceedings against Dr. Badii in other states (*e.g.*, in California and Ohio) before a Recommended Decision was issued here.

Dr. Badii has filed no response to my April 19, 2024 order, and the time for doing so has expired. He has also filed no reply to Board Complaint Counsel’s response to the April 19, 2024 order.

Disposition

I conclude that there remain in this proceeding no further facts to be found by DALA, or issues of law for DALA to decide, regarding the Allegations the Board asserted against Dr. Badii and then referred to DALA, together with Dr. Badii’s answer, for the issuance of a Recommended Decision; and that, as a consequence, the matter may now be concluded at DALA by issuing a Recommended Decision. I do so based upon (1) the Board’s unopposed motions to dismiss Allegations 2-25, and for summary decision on the remaining Allegations 26-39 (regarding discipline imposed upon Dr. Badii in other states including Connecticut and Maryland on grounds that would support physician discipline in Massachusetts); (2) the April 19, 2024 order in which I granted the Board’s motions to dismiss Allegations 2-25 and for summary decision in its favor on the remaining

allegations (26-39); (3) Dr. Badii's failure to file a response to my April 19, 2024 order; and (4) the Board's uncontested response to that order stating that this matter has not been, and is not being, resolved by agreement, that the discipline imposed upon Dr. Badii in Connecticut and Maryland established facts upon which reciprocal discipline may be imposed upon him in Massachusetts, and that a Recommended Decision should issue based upon the findings recited in the April 19, 2024 order.

Because nothing remains to be adjudicated, I now issue this Recommended Decision, pursuant to 801 C.M.R. § 1.01(7)(a)1. I recommend that the Board make final the dismissal of its Allegations 2-25 against Dr. Badii and the summary decision of remaining allegations 26-39 (based upon the now-final physician discipline imposed in Maryland and Connecticut), and determine what discipline is appropriate based upon summarily-decided Allegations 26-39.

In accordance with the provisions of 801 C.M.R. § 1.01(11)(c)(1), each of the parties has 30 days to file written objections to this Recommended Decision (if any) with the Board of Registration in Medicine.

SO ORDERED.

DIVISION OF ADMINISTRATIVE LAW APPEALS

/s/ Mark L. Silverstein

Mark L. Silverstein
Administrative Magistrate

Dated: June 21, 2021