COMMONWEALTH OF MASSACHUSETTS

Middlesex, ss. **Division of Administrative Law Appeals**

Board of Registration in Medicine,
Petitioner

v. Docket No.: RM-19-0043

Ana Deju-Quevedo, M.D.,
Respondent

Appearance for Petitioner:

Gloria Brooks, Esq.
Stephen C. Hoctor, Esq.
Board of Registration in Medicine
200 Harvard Mill Square, Suite 330
Wakefield, MA 01880

Appearance for Respondent:

Pro se
28 Harrison Street
Taunton, MA 02148

Administrative Magistrate:

Edward B. McGrath, Esq.
Chief Administrative Magistrate

SUMMARY OF RECOMMENDATION

While the Board has primary responsibility "in the regulation of medicine in order to promote the public health, welfare and safety," its statement of allegations stated that the doctor should be disciplined for engaging in conduct that undermines the public confidence in the integrity of the medical profession. The Board failed to prove that and I, therefore, recommend that the Board not discipline the doctor.

RECOMMENDED DECISION

On January 25, 2019, the Petitioner, Board of Registration in Medicine (Board), issued a Statement of Allegations ordering the Respondent, Ana Deju-Quevedo, M.D., to

show cause why she should not be disciplined for practicing medicine in violation of law, regulations or good and accepted medical practice. It alleged that the doctor engaged in misconduct that undermines the public confidence in the integrity of the medical profession.

The Board referred the matter to the Division of Administrative Law Appeals (DALA). On February 1, 2019, DALA acknowledged receipt of the case and four days later scheduled a pre-hearing conference for March 11, 2019. Dr. Deju-Quevedo filed her answer to the statement of allegations on February 22, 2019.

The pre-hearing conference was held and it was ordered that the parties report back to DALA at the end of April, 2019 concerning possible stipulations addressing the resolution of the matter. The matter was continued again, pursuant to the Petitioner's request dated May 2, 2019, and on September 26, 2019 I scheduled the evidentiary hearing of this matter for December 3, 2019.

I held the evidentiary hearing concerning the Statement of Allegations at DALA, 14 Summer Street, 4th Floor, Malden, Massachusetts, on December 3, 2019. Prior to the hearing, I marked the Petitioner's Potential Witness List and List of Exhibits "A" for identification. I marked the Doctor's pre-hearing submission "B" for identification. I marked the Board's exhibits without objection (Pet. Exs. 1-9) and the Doctor's exhibits also without objection (Res. Exs. 1-5).

Five witnesses testified at the hearing. Robert Harvey, the Physician Health and Compliance Manager at the Board, testified for the Board. Doctor Rezene Berhane, who supervised the Respondent for a time, and Doctor Matthew Lowry were called as Board witnesses. Dr. Lowry serves as the Chief Medical Officer at Norwood Hospital and is a

facilitator of the Physician's Health Committee. Margaret Leung, M.D. testified by video. Dr. Leung reported the Respondent to the Board pursuant to G.L. c. 112, § 5F and was called as a witness by the Board. In addition, the Board called the Respondent as a witness and she testified on her own behalf. Following the hearing, I marked the Respondent's Closing Statement "C" and the Petitioner's "D". When I received the Petitioner's Closing Statement on April 18, 2020, I closed the record.[1]

FINDINGS OF FACT

Based on the testimony, my assessment of the witnesses' credibility and the exhibits in evidence, I make the following findings of fact:

1. Ana Deju-Quevedo, M.D. studied medicine in Cuba, graduating from medical school in 1988. She completed her residency in Internal Medicine in Cuba and then did residency training again at Bridgewater Medical Center. (Deju-Quevedo p. 68 ll. 11 – 15.)[2]

2. Dr. Deju-Quevedo was licensed to practice medicine in Massachusetts pursuant to license number 236314, which expired on October 17, 2014. (Pet. Ex. 3 p. 1.)

3. Between 2008 and 2012, Dr. Deju-Quevedo worked at Bridgewater Medical Center and, in 2013, she worked at Norwood Hospital. (Deju-Quevedo p. 68 ll. 17-20 and p. 69 l. 1.)

4. She last worked as a physician in March, 2013. At that time, she was practicing at Norwood Hospital. She worked the seven p.m. to seven a.m. shift. (Deju-Quevedo p. 69 l. 1 and l. 15.)

---

[1] The Petitioner asked for and received extensions of time to prepare its closing brief because Complaint Counsel who participated in the evidentiary hearing left her position with the Board before submitting the closing brief and the onset of the COVID-19 crisis further delayed the completion of the Petitioner's brief.

[2] Citations to the hearing transcript will use the following format: Name of witness, page number, line number.

5. There were no complaints concerning the quality of the care provided by Dr. Deju-Quevedo while she worked at Norwood Hospital. (Berhane p. 39 l. 2.)

6. In October of 2012, Dr. Deju-Quevedo was taking over the counter medication for asthma. One evening, she called the hospital to tell the hospital administrator that she was sick and would not be able to work. She was told that there was no replacement for her and so she went to work after consuming two Primatene tablets and an energy drink. (Deju-Quevedo p. 75 ll. 12-24)

7. That morning at work, Dr. Deju-Quevedo appeared a little disheveled and disorganized and was taken to the emergency room. (Berhane p. 39 ll. 18-24.)

8. At the emergency room, it was documented that she had "a history of asthma and has been noted to be clearly exhausted." It was also noted that there "was a positive urine tox screen for methamphetamines, most likely secondary to the bronchodilator she has been using for years. There is no suspicion for illicit drug use." (Pet. Ex. 8 p. 4C and 4D)

9. She was admitted to the hospital for 24-hour observation and then referred to Norwood Hospital's Physician's Health Committee. That committee met with Dr. Deju-Quevedo and referred her to Physicians Health Service (PHS). (; Deju-Quevedo p. 70 l. 1. 18, Lory p. 60 ll. 10-14.)

10. PHS is an arm of the Massachusetts Medical Society that meets with doctors to screen for anything that might be impacting the doctor's professional performance. Once they screen a doctor, if they find a problem, they develop a plan to mitigate the problem. (Lowry p. 62 l. 2.)

11. Dr. Deju-Quevedo began with PHS on her own volition. (Deju-Quevedo p. 105 l. 5, Lowry p. 60 l. 6.)

12. Dr. Deju-Quevedo was told not to return to work until she was cleared by PHS. (Deju-Quevedo p. 71 l. 24.)

13. Dr. Deju-Quevedo followed up with PHS. She also followed up with her primary care physician concerning her asthma. (Deju-Quevedo p. 73 ll. 5-24.).

14. PHS instructed Dr. Deju-Quevedo to see her primary care physician for her asthma, stop using Primatene, and take random tox screenings given by her employer. (Deju-Quevedo p. 76 ll. 16-22.)

15. In November of 2012, Dr. Deju-Quevedo was hospitalized for depression at Pembroke Hospital for three days because she was having suicidal ideation. (Deju-Quevedo p. 80 ll. 12-18.)

16. She discussed this incident with the PHS subcommittee on November 15, 2012. (Pet. Ex. 9.)

17. She was cleared to return to work by Dr. Lori Adcock and Dr. Norman Alpert of PHS. She worked for about 45 days and was terminated without cause on April 1, 2013. She was told to refrain from seeing or treating patients of Steward Medical Group effective April 2, 2013. (Deju-Quevedo p. 77 ll. 6-16; Pet. Ex. 1.)

18. On July 19, 2013, the Steward Norwood Hospital Board of Directors met and voted to accept Dr. Deju-Quevedo's resignation in good standing. (Pet. Ex. 2.)

19. At the end of July 2013, Dr. Deju-Quevedo called 911 and was hospitalized for alcohol treatment, because she had been binge drinking for three to four weeks. (Deju-Quevedo p. 81 ll. 6-18.)

20. Dr. Deju-Quevedo was suicidal and in-patient treatment was not helping. (Deju-Quevedo p. 82 ll. 8-22.)

21. Dr. Margaret Leung spoke to Dr. Deju-Quevedo pursuant to a consultation for depression and suicidal ideation on or about August 2, 2013. Dr. Leung noted that Dr. Deju-Quevedo was terminated from her job in April. Dr. Deju-Quevedo reported that she had been drinking a liter of vodka a day for "the past 3-4 weeks." (Pet. Ex. 5.)

22. Dr. Leung noted that she was concerned that, if Dr. Deju-Quevedo returned to work, "her mental health and substance use will impair her judgment…as well as jeopardize patient safety if she is not appropriately treated." (*Id.*)

23. Dr. Leung was concerned particularly about Dr. Deju-Quevedo's uncontrolled drinking, because it "could potentially compromise patient safety." (Leung p. 28 l. 21-p. 29 l.1.)

24. Dr. Leung reported to the Board concerning Dr. Deju-Quevedo's situation, because of the amount of alcohol Dr. Leung was drinking. (Leung p. 30 l. 24.)

25. When she applied to renew her medical license on October 17, 2014, Dr. Deju-Quevedo reported that alcohol abuse and dependency was interfering with her practice of medicine. (Pet. Ex. 3 p. 4)

26. On October 18, 2016, Dr. Deju-Quevedo wrote that she decided not to renew her Massachusetts medical license. (Res. Ex. 1)

27. In 2017, Dr. Deju-Quevedo began living in a sober house and was still living there at the time of the evidentiary hearing. (Deju-Quevedo p. 86 ll. 11-14.)

28. Joseph Shrand, M.D. is a psychiatrist and has been attending Dr. Deju-Quevedo since November 21, 2017. According to Dr. Shrand, Dr. Deju-Quevedo has

been sober while he has been treating her and has been complaint with all aspects of her care. (Res. Ex. 4)[3]

29. On December 13, 2017, the Board wrote to support Dr. Deju-Quevedo's efforts to remain sober and stated that it would be looking for eighteen months of sobriety before Dr. Deju-Quevedo petitioned to return to the practice of medicine. (Res. Ex. 2.)

30. On December 22, 2017, Dr. Deju-Quevedo had a urine drug screen come back positive for alcohol. It had been ordered by PHS and, in response, PHS increased the frequency of Dr. Deju-Quevedo's random testing to three times per week. (Deju-Quevedo p. 86 ll. 15-22, Pet. Ex. 4.)

31. PHS reported the positive urine test to the Board. (Harvey p. 98 l. 20.)

32. Dr. Deju-Quevedo acknowledged drinking alcohol. (Pet. Ex. 4.)

33. Dr. Deju-Quevedo believes that kombucha she drank caused the positive test. She was drinking five bottles of kombucha a day, because of the probiotics it contains and she started drinking it five or six days before the positive test. (Deju-Quevedo p. 88 ll. 11-13.)

34. Dr. Deju-Quevedo has worked hard to stay sober and has been sober since the end of 2017. She has been complaint with her PHS treatment plan since she re-signed her contract with PHS. She credits her success with finding the right therapy and psychiatrist. (Deju-Quevedo p. 104 ll. 9-p. 105 l. 3., Resp. Exs. 3 & 4)

35. On January 24, 2019, the Board filed the Statement of Allegations which alleged that Dr. Deju-Quevedo had tested positive for methamphetamine. It further alleged that Dr. Deju-Quevedo was binge drinking alcohol in 2013, admitted on her

[3] Dr. Shrand opined in the report marked as Resp. Ex. 4 that Dr. Deju-Quevedo is able to resume her duties as a physician. Because the issue before me is whether Dr. Deju-Quevedo should be disciplined for her conduct, I do not consider that opinion in rendering my decision.

application to renew her medical license dated 2014 that her use of a chemical substance had interfered with her practice of medicine and tested positive for alcohol in 2017. The Statement of Allegations explained the Board's legal basis for proposed relief as: The "Physician has engaged in conduct that undermines the public confidence in the integrity of the medical profession." (Administrative record.)

36. On February 22, 2019, Dr. Deju-Quevedo answered the Statement of Allegations, concluding her answer by stating that no disciplinary action should be taken, but agreeing to "accept any recommendation the Board may make with respect to on-going compliance with my PHS Substance Use Monitoring Contract." (Administrative record.)

CONCLUSION AND RECOMMENDATION

The Petitioner failed to prove that Dr. Deju-Quevedo engaged in conduct that undermines the public confidence in the integrity of the medical profession and I, therefore, recommend that the Board not discipline her.

The conduct that the Board proved Dr. Deju-Quevedo engaged in was not the kind that undermines the public's confidence in the integrity of the medical profession. Dr. Deju-Quevedo's statement contained in her application to renew her medical license that alcohol abuse and dependency interfered with her practice of medicine did not persuade me otherwise. To the extent that Dr. Deju-Quevedo tested positive for methamphetamines in 2012, Dr. Deju-Quevedo's credible testimony corroborated by the emergency room notes in evidence convinced me that this was the result of the doctor's taking over the counter asthma medication. While there was evidence that Dr. Deju-

Quevedo has a history of alcohol abuse, that conduct did not affect her care of patients. The binge drinking that concerned Dr. Leung occurred after she stopped treating patients.

The legislature has provided the Board with the authority to discipline a physician when, after a hearing, it is convinced that the doctor:

> (d) is guilty of practicing medicine while the ability to practice is impaired by alcohol, drugs, physical disability or mental instability;
>
> (e) is guilty of being habitually drunk or being or having been addicted to, dependent on, or a habitual user of narcotics, barbiturates, amphetamines, hallucinogens, or other drugs having similar effects;...

G.L. c.112, §5; *See Levy v. Board of Registration in Medicine*, 378 Mass. 519, 522, 392 N.E.2d 1036, 1038 (1979). In addition, the legislature has provided that the Board may suspend, revoke or cancel any certificate, registration, license or authority issued by it, if it appears to the Board that the holder of such certificate, registration, license or authority, is incapacitated by reason of mental illness. G.L. c 112, §61. But the Board did not allege Dr. Deju-Quevedo violated either of the provisions set out in section 5 or was mentally incapacitated. Instead it alleged and tried to prove that the doctor engaged in conduct which undermines the public's confidence in the integrity of the medical profession and it failed to persuade me of that fact.

Dr. Deju-Quevedo has struggled with her mental health and alcohol abuse issues. There was evidence of one drinking relapse in 2017 and following that relapse Dr. Deju-Quevedo renewed her commitment to sobriety. She has been honest in her dealings with the Board and there was no evidence that the care of any patient suffered because of her behavior. While no evidence of actual harm to patients or that the public has lost confidence in the medical profession was necessary, I do believe that it is probative in

assessing Dr. Deju-Quevedo's conduct. *See Kobrin v. Board of Registration in Medicine*, 444 Mass. 837, 847, 832 NE.2d 628, 637 (2005).

I realize that "the role of the Board in the overall statutory scheme is to take primary responsibility in the regulation of the practice of medicine in the Commonwealth 'in order to promote the public health, welfare, and safety.'" *Levy, supra* at 524, 392 N.E.2d at 1039. Exercising the authority given it by the legislature, the Board adopted regulations to protect the public by placing restrictions on a physician's license. 243 CMR 1.05(7) provides:

> Imposition of Restrictions. Consistent with 243 CMR 1.00 and M.G.L. c. 30A or otherwise by agreement with the licensee, the Board may impose restrictions to prohibit a licensee from performing certain medical procedures, or from performing certain medical procedures except under certain conditions, if the Board determines that:
> (a) The licensee has engaged in a pattern or practice which calls into question her competence to perform such medical procedures, or
> (b) The restrictions are otherwise warranted by the public health, safety and welfare.

My decision does not address this regulation, because it was not raised in the statement of allegations or at the hearing. This decision addresses the case the Petitioner chose to present; perhaps because Dr. Deju-Quevedo has agreed consistently, including in her answer to the statement of allegations, to accept any recommendation made by the Board with respect to on-going PHS monitoring.

CONCLUSION

The Petitioner did not prove that Dr. Deju-Quevedo engaged in conduct that undermined the public's confidence in the medical profession and I, therefore, recommend that the Board not discipline her.

DIVISION OF ADMINISTRATIVE LAW APPEALS

_____

Edward B. McGrath
Chief Administrative Magistrate
DATED: June 24, 2020