

COMMONWEALTH OF MASSACHUSETTS

Middlesex, ss.

Division of Administrative Law Appeals

Board of Registration in Medicine,
Petitioner,

No. RM-18-622

v.

Richard Pedro, D.O.,
Respondent.

Appearance for Petitioner:

Lawrence Perchick, Esq.
Board of Registration in Medicine
200 Harvard Mill Square
Wakefield, Massachusetts 01880

Appearance for Respondent:

David M. Gould, Esq.
Ficksman & Conley, LLP
98 North Washington Street
Boston, MA 02114

Administrative Magistrate:

Edward B. McGrath
Chief Administrative Magistrate

SUMMARY OF RECOMMENDED DECISION

The respondent physician contacted escorts through a website and, on one occasion, paid an escort for sex. This criminal behavior was never prosecuted. Nevertheless, it amounted to sanctionable "lack of good moral character" and "conduct that undermines public confidence in the integrity of the medical profession."

RECOMMENDED DECISION

The Board of Registration in Medicine (board) seeks to impose disciplinary sanctions upon respondent Dr. Richard Pedro, alleging that he arranged on multiple occasions to pay escorts for sex. The board referred the case to the Division of Administrative Law Appeals for recommended findings of fact and conclusions of law.

I held an evidentiary hearing on October 21, 2019. The witnesses were Dr. Pedro, Officer Charles Mello (of the Seekonk Police Department), Mr. Robert Bouton (a board investigator), Dr. Vijayendra Sudheendra (Dr. Pedro's colleague), and Dr. Robert Marzilli (Dr. Pedro's psychologist). The hearing was transcribed. I admitted into evidence the board's exhibits, marked 1-3, and Dr. Pedro's exhibits, marked A-N. The parties submitted closing briefs, and I closed the record on March 13, 2020.

Findings of Fact

Having considered the exhibits and the testimony, and having assessed the witnesses' credibility, I make the following findings of fact.

1. Dr. Richard Pedro is a board-certified anesthesiologist. He graduated medical school in 2010 as a Doctor of Osteopathy. He provides anesthesiology care at several hospitals in southern Massachusetts and Rhode Island. (Pedro 25, 87; Sudheendra 73, 76.)¹
2. Backpage.com was a website that, among other things, enabled strangers to arrange intimate encounters. Dr. Pedro used the website for this purpose on three occasions. (Pedro 28-38, 95-101; Mello 44-49; Bouton 59-63, 67.)
3. The first two occasions were in 2012 and 2013. On one of them, in 2013, Dr. Pedro paid a woman for sex. (Pedro 28-29, 95-97; Bouton 60-61.)²

¹ This recommended decision cites hearing testimony by witness name and transcript page number.

² The board alleges that Dr. Pedro also paid the other woman for sex, but I do not find this allegation proven by a preponderance of the evidence. Dr. Pedro's insistence at the hearing that he paid for sex on one occasion, in 2013, conflicted only with investigator Mello's recollection of Dr. Pedro's admissions to the board in 2017. It is at least plausible that Dr. Pedro did not make all pertinent details unambiguous at the 2017 meeting.

4. On February 1, 2015, Dr. Pedro contacted a third woman and arranged to meet her at a motel. After ruminating in a nearby parking lot, Dr. Pedro departed without entering the building. (Pedro 28, 33-36, 100-01, 104; Mello 46-49; Bouton 62-63; Resp. Exhibit N.)

5. On a number of additional occasions, Dr. Pedro called phone numbers he located on Backpage.com but did not arrange in-person encounters. (Marzilli 124, 128-29.)

6. Dr. Pedro viewed Backpage.com as an "escort service," and the women he met through it as "prostitutes." He recalled the website's postings as listing "prices." (Pedro 36, 38, 98, 104.)

7. Dr. Pedro first married in 2007. The marriage was unhappy and contentious, ending in 2014. The events of February 1, 2015 followed an argument between Dr. Pedro and his ex-wife. (Bouton 67-68; Pedro 91-100; Marzilli 114-16.)

8. Dr. Pedro has been receiving psychological treatment since 2013 or 2014. Therapy and a 2017 second marriage have improved his mental outlook. (Bouton 69; Pedro 86, 102-03; Marzilli 112-21; Resp. Exhibit A.)

9. In October 2015, Dr. Pedro met with agents of the Department of Homeland Security at their request. He told the agents about his use of Backpage.com and permitted them to inspect his cellphone. The agents belonged to a task force that combined federal and state law enforcement officers. Dr. Pedro was not subsequently charged with any crime. (Pedro 29-30, 103-06; Mello 43, 47-52.)

10. In February 2017, the board contacted Dr. Pedro to interview him and to propose a suspension of his license. Dr. Pedro attended the interview but did not agree to a voluntary suspension. (Pedro 26-27; Bouton 57-65.)

11. Neither Dr. Pedro's colleagues nor the board have received any complaints about Dr. Pedro's practice of medicine. He has not been sued for malpractice. His peers and staff hold him in high regard. (Bouton 65-66; Sudheendra 77-83; Resp. Exhibits B-M.)

Analysis

It is a criminal offense to "pay . . . another person to engage in sexual conduct," or to "agree" to do so. G.L. c. 272, § 53A(b). This offense is punishable by up to 2.5 years in the house of corrections. *Id.*; *Commonwealth v. Brown*, 481 Mass. 77, 83 n.8 (2018). Dr. Pedro admits the board's fundamental allegation, namely that he has committed this crime: by his own confession, he paid a woman in exchange for sexual conduct in 2013.³

Dr. Pedro's defense is essentially that the board may not discipline criminal conduct that *neither* resulted in a conviction *nor* arose from the practice of medicine. To be sure, the governing statute, G.L. c. 112, § 5, and the pertinent board regulation, 243 C.M.R. § 1.03, do not specifically address such circumstances. These enactments provide for discipline upon "conviction of any crime." 243 C.M.R. § 1.03(5)(a)(7) (emphasis added). Even without a conviction, the statute and regulation authorize discipline for any offense "relating to the practice of medicine." G.L. c. 112, § 5(b), (h); 243 C.M.R. § 1.03(5)(a)(2), (11). The board is also expressly empowered to discipline physicians for "conduct which places into question the physician's competence to practice medicine," G.L. c. 112, § 5(c); 243 C.M.R. § 1.03(5)(a)(3), and for "misconduct in the practice of medicine," 243 C.M.R. § 1.03(5)(a)(18).

The board acknowledges that none of these provisions encompasses Dr. Pedro's conduct.

³ It is not necessary to resolve the unbriefed question of whether, in his 2012 and 2015 assignments, Dr. Pedro "agreed" to pay for sex within the meaning of G.L. c. 272, § 53A(b).

The Supreme Judicial Court has made plain, however, that the board's disciplinary authority is not confined to the catalogues stated in the governing statute and regulation: "Although formal promulgation may be the best practice, the board may adopt policies by adjudication as well." *Raymond v. Bd. of Registration in Med.*, 387 Mass. 708, 713 (1982); *Aronoff v. Bd. of Registration in Med.*, 420 Mass. 830, 833 (1995). The board availed itself of this technique in *Raymond* by "announcing," through adjudicative proceedings, "that lack of good moral character and conduct that undermines public confidence in the integrity of the medical profession are grounds for discipline." 387 Mass. at 713.

Subsequent case law has reiterated the validity of "lack of good moral character" and "conduct that undermines public confidence" as predicates for discipline. *Aronoff*, 420 Mass. at 833; *Sugarman v. Bd. of Registration in Med.*, 422 Mass. 338, 342-43 (1996); *Weinberg v. Bd. of Registration in Med.*, 443 Mass. 679, 685 (2005). And it is clear that these common law predicates demand *neither* criminality *nor* conduct arising from the physician's medical practice. See *Aronoff*, 420 Mass. at 833 & n.4 (upholding discipline based on doctor-patient commercial transactions, and stating that *Raymond* is not "limited solely to criminal conduct"); *Sugarman*, 422 Mass. at 343 (upholding discipline based on disclosures of confidential information, and stating that the board "is not limited to disciplining conduct involving direct patient care, criminal activity, or deceit"); *Raymond*, 387 Mass. at 712 (upholding discipline based on possession of unregistered submachine guns). There is thus no *category*-based barrier to the imposition of discipline upon Dr. Pedro.

The question remains whether Dr. Pedro's *specific* circumstances and conduct reflect poor moral character, or any injury to the public's confidence in the medical profession. It appears to be the board's unswerving custom to include these twin theories of wrongdoing in

every enforcement action. The board's supporting argumentation—here, and routinely—is that both theories are within the board's powers under *Raymond*, *supra*, and *Levy v. Bd. of Registration & Discipline in Med.*, 378 Mass. 519 (1979). But it should be obvious that the overarching validity of the board's proffered grounds for discipline provides dim guidance for proceedings designed to adjudicate whether those grounds are present in a particular case. Inconsistency, arbitrariness, and caprice loom if assessments of “morality” and of a profession's public “image” are shaped neither by definite regulations nor even by fact-based precedents.

Nevertheless, the case law offers sufficient guidance to disclose that here the board has established the disciplinary theories it advances. *Raymond*'s morality- and public-confidence-based grounds for discipline attach at least to conduct “antithetical to a commitment to preserve life, alleviate suffering, and restore health.” 387 Mass. at 712. The board has stated repeatedly and without qualification that “criminal conduct” is antithetical to these core values. *In the Matter of Tamaren*, No. 2008-10, slip op. at 3 (BORIM Nov. 4, 2009); *In the Matter of Romano*, No. 2005-26, slip op. at 1 (BORIM Apr. 12, 2006); *In the Matter of Kobrin*, No. 03-27-DALA, slip op. at 1-2 (BORIM Nov. 17, 2004), *aff'd*, 444 Mass. 837 (2005). The board has stated further that such conduct reflects poor moral character and injures the profession's image even “[w]here criminal cases have not resulted in a conviction.” *In the Matter of Barrocas*, No. 2020-27, slip op. at 4-5 (BORIM Dec. 17, 2020) (collecting cases). This case law reflects a significant expansion upon the regulation authorizing discipline for “conviction of any crime,” 243 C.M.R. § 1.03(5)(a)(7) (emphasis added): but *Raymond* and its progeny bless the board's power to effect such expansions through adjudication.

The result is that Dr. Pedro's criminal behavior of “pay[ing] . . . another person to engage in sexual conduct,” G.L. c. 272, § 53A(b), establishes “lack of good moral character” and

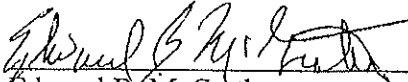
“conduct that undermines public confidence in the integrity of the medical profession” within the meaning of *Raymond*. This result is independent of any analysis of the social values underlying the specific offense at issue. *See generally* Acts 2011, c. 178 (enacting the current version of § 53A, and bearing the title “An Act Relative to the Commercial Exploitation of People”).

It will be for the board to determine the appropriate sanction, if any, upon consideration of all relevant facts and circumstances. It seems especially weighty that Dr. Pedro’s criminal offense occurred approximately eight years ago, and that he has been an excellent physician and colleague before and since. The unhappy circumstances of Dr. Pedro’s first marriage do not appear to present great significance for mitigation purposes.

Conclusion

I recommend the findings of fact stated in numbered paragraphs 1-11 *supra*. I recommend the ruling of law that the board has established “lack of good moral character” and “conduct that undermines public confidence in the integrity of the medical profession” within the meaning of *Raymond v. Bd. of Registration in Med.*, 387 Mass. 708 (1982).

DIVISION OF ADMINISTRATIVE LAW APPEALS



Edward B. McGrath
Chief Administrative Magistrate

Dated: June 28, 2021