

BOARD OF REGISTRATION IN MEDICINE, <i>Petitioner</i> ,	:	Docket No. RM-23-0518
	:	
v.	:	
	:	
HOSSEIN SADRZADEH, M.D., <i>Respondent</i> .	:	
	:	

The Board's disciplinary proceedings began after the Petitioner received a continuance without a finding ("CWOFF") for operating under the influence ("OUI"). The Board moved for

summary decision arguing no hearing was necessary because there was no dispute this conduct merited sanction. The Respondent opposed it for a few reasons. First, he argued that the proposed discipline relied primarily on prior Board decisions that themselves arose out of consent decrees. He submits that a “consent decree” is binding only on the parties that entered into it, and thus has no precedential value to bind DALA in this case. He thus argued that as a factual matter, a CWOFF for OUI does not *per se* show he undermined the public confidence. Additionally, he wanted the opportunity to introduce mitigation evidence not already in the record and which he would likely be precluded from submitting once the matter is sent back to the Board for resolution. I denied the Board’s motion, in part. I held the Respondent had the right to make a factual record so that he could challenge the allegation that his CWOFF shows he lacks good moral character. I also agreed the Respondent was entitled to a hearing regarding mitigation. *Veksler v. Bd of Reg. in Dentistry*, 429 Mass. 650 (1999); G.L. ch. 112, § 5.¹

I held a virtual hearing using the WebEx platform with the consent of both parties.² The Petitioner testified and presented the testimony of Drs. Leonard Silk and Mark Sloan; the Board offered no witnesses. I entered Board Exhibits A-E and Respondent Exhibits 1-4 into evidence. The parties submitted closing briefs on August 12, 2024, at which point I closed the administrative record.

FINDINGS OF FACT

1. The Respondent has been licensed to practice in Massachusetts since 2018. He is board-

¹ The Respondent proffered that he wanted to introduce evidence not already in the record. Board counsel agreed that, absent a hearing, it would be unlikely the Respondent would be able to present this evidence once the matter returned to the Board for a final decision, since the Board limits its review to the factual record presented before DALA.

² The Board maintained its objection to holding a hearing but consented to the hearing being held virtually.

- certified in internal medicine. (Sadrzadeh testimony; Ex. 1.)
2. Although initially trained in Iran, he came to the United States in 2010 as a researcher. After passing his licensing examinations, he eventually became the chief resident at Capitol Health Hospital in 2017. Thereafter, he completed a fellowship in geriatric hematology/oncology at the Boston Medical Center. Since then, he has worked as a hematologist at the Dana Farber Cancer Institute. (Sadrzadeh testimony.)
 3. He is married and has two children. (Sadrzadeh testimony.)
 4. In 2015, the Respondent was arrested for OUI in Pennsylvania on his way home from a G.L. c. 4, § 7(26)(c). He was not on call nor scheduled to work the next day. (Sadrzadeh testimony; Ex. 1.)
 5. G.L. c. 4, § 7(26)(a)
[REDACTED]
[REDACTED] (Ex. 1.)
 6. In his 2018 initial license application, he was asked if he had ever been “charged” with a crime. The question specified that he had to disclose the charge even if it had been expunged. Thus, he answered yes, disclosed the 2015 OUI, and submitted the court dockets. (Sadrzadeh testimony; Ex. 1.)
 7. On February 16, 2020, he was again arrested for OUI, this time in Massachusetts. The Respondent was driving along Route 20 around 2:50a.m. G.L. c. 4, § 7(26)(c)
G.L. c. 4, § 7(26)(c) (Ex. A.)
 8. He was not on call nor scheduled to work the next day. (Sadrzadeh testimony.)

³ G.L. c. 4, § 7(26)(a)

9. He was stopped by a police officer for repeatedly crossing over the yellow center line and braking quickly and unnecessarily. (Ex. A.)
10. He told the officer that he consumed “two... three...two drinks” at a party before driving home. The Respondent then failed three field sobriety tests. (Ex. A.)
11. At the roadside, his preliminary breath test resulted in a blood alcohol content (“BAC”) of G.L. c. 4, § 7(26)(c). He later took a chemical breath test at the station. His BAC was G.L. c. 4, § 7(26)(c).⁴ (Ex. A.)
12. On February 18, 2020, he was arraigned in Waltham District Court and charged with various offenses, including operating under the influence of intoxicating liquor pursuant to G.L. c. 90, § 24(1)(a)(1). (Ex. A.)
13. He then retained an attorney. While representing the Respondent, his attorney advised him of possible outcomes, including a CWOFF and a 24D program.⁵ The Respondent’s understanding of this explanation was that if he took this disposition, he would not have to disclose this charge “for any employment purposes” because it would be “out of [his] file.”⁶ (Sadrzadeh testimony.)
14. On March 24, 2021, before he appeared in court to admit to sufficient facts, the Respondent submitted his biennial license renewal application. He answered “no” to the following questions:

⁴ Both readings were above the legal limit for operating a vehicle, which is 0.08%. *See* G. L. c. 90, § 24 (1) (a) (1).

⁵ A “24D” program is the colloquial term for a disposition pursuant to G.L. c. 90 § 24D, which refers a defendant to a driver alcohol education program as a term of probation.

⁶ I cannot say for sure what advice the Respondent’s lawyer gave him. I do, however, credit the Respondent’s testimony of his understanding of that advice, which I explain in this finding of fact.

- Have you been charged with any criminal offense during this period?
- Are there any criminal charges pending against you today?

(Ex. B.)

15. Despite his answers, the criminal case remained pending. His answers deprived the Board of information to which it was legally entitled. The Respondent does not dispute this.
16. On October 6, 2022, he admitted to sufficient facts on the OUI charge and received a CWOFF for a one-year period while the remaining charges were dismissed. (Sadrzadeh testimony; Ex. A.)
17. The Respondent did not tell his residency program about his 2015 arrest. He also did not disclose his 2020 arrest to his fellowship program at the time. (Sadrzadeh testimony.)
18. However, there is no evidence he was under any obligation to disclose these events to these entities.

Facts in Mitigation

19. The Respondent did not intentionally fail to disclose his OUI charges on his application.⁷
20. In his career, the Respondent has never practiced medicine while impaired, nor consumed alcohol before work, at work or while on call. (Sadrzadeh testimony.)

⁷ I credit his explanation that he answered “no” based on his understanding of his lawyer’s advice. He believed he would not have to disclose this for employment purposes, which included his renewal application; also, because he believed his charge would be “out of his file,” he did not think he had to disclose it since the question here did not ask to disclose “expunged” charges like the application in 2018 had. I find the Respondent’s explanation credible because, *inter alia*, in 2018, he admitted in his application that he had been charged with a crime (the 2015 OUI) specifically because the question directed he disclose even expunged charges. I do not believe he would intentionally mislead the Board in 2020 in answering a similar question.

In any event, this finding does not take away that his answer resulted in a violation of 243 Code of Mass. Regs. § 1.03(5)(a)(16). It is simply mitigation evidence for the Board’s consideration in fashioning a sanction.

21. As part of his probation, the Respondent completed the 24D program consisting of 16 hours of classes. (Sadrzadeh testimony.)
22. G.L. c. 4, § 7(26)(a) [REDACTED]
[REDACTED]. (Sadrzadeh testimony.)
23. Apart from the 24D program, he became involved with Physician Health Services (“PHS”), which the Board had recommended he join. (Sadrzadeh testimony.)
24. At PHS, he did an intake and gave a blood and urine sample. He then entered into an “abstinence agreement.” That required a one-year commitment during which time he abstained from alcohol, participated in monthly individual therapy sessions, monthly support groups, and regular but random drug testing. He complied with the agreement in its entirety. When it was set to expire, he voluntarily extended it for six months to demonstrate his ongoing abstinence. (Sadrzadeh testimony; Exs. 2-3.)
25. Dr. Leonard Silk is a clinical psychologist. G.L. c. 4, § 7(26)(c) [REDACTED]
[REDACTED]. (Silk testimony.)
26. After the Respondent was referred to PHS, he began working with Dr. Silk. G.L. c. 4, § 7(26) [REDACTED]. G.L. c. 4, § 7(2) [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
27. They have discussed stress management and the Respondent’s alcohol abstinence. (Silk testimony.)
28. Dr. Silk has been working with the Respondent for some time and is familiar with the efforts he has undertaken with respect to his abstinent agreement. Because of that, I credit his opinion that the Respondent does not meet the criteria for alcohol abuse disorder

today. I also credit his opinion that the Respondent's alcohol use does not need to be monitored and his ability to practice medicine is not impaired by alcohol in any way.

(Silk testimony.)

29. Dr. Mark Sloan is the program director where the Respondent participated in his fellowship. (Sloan testimony.)
30. He worked closely with the Respondent for almost five years. In that time, he never saw the Respondent impaired, was never concerned about him being impaired, and never heard anyone else express any concerns. (Sloan testimony.)
31. Dr. Sloan had only recently learned about the Respondent's OUI; however, he was not aware of any obligation the Respondent had to tell him about it when it occurred. (Sloan testimony.)

DISCUSSION

The Board alleges the Respondent may be disciplined on two different grounds. First, he failed to disclose his arrest and pending charges in his licensing application in violation of 243 Code Mass. Regs. § 103(5)(a)(16). Second, he engaged in conduct that undermines the public confidence in the integrity of the medical profession because he committed a criminal act. *Levy v Bd. of Registration in Med.*, 378 Mass. 519 (1979); *Raymond v. Bd. of Registration in Med.*, 387 Mass. 708 (1982).

1. The Respondent committed sanctionable misconduct.

The Respondent does not dispute he failed to disclose his arrest and pending charges in his application and that was a violation of the Board's regulations. I agree with the Board, and the Respondent's concession, that the evidence supports a finding he deprived the Board of information to which it was legally entitled. 243 Code Mass. Regs. § 103(5)(a)(16). I also agree

with the Board, and the Respondent's concession, that intent does not matter with respect to whether he violated this regulation. *See e.g. In the Matter of Paul Sklarew, MD*, BRM-2016-009 (Consent Order Feb. 11, 2016). At most, it is relevant for mitigation purposes.

The Respondent also argues that a CWO for an OUI, given the specific context of his case, is not evidence that undermines public confidence under *Levy/Raymond*. He adds that I should not rely on prior Board cases analyzing the same issue as precedent because most, if not all, were based on consent decrees between the doctors in those cases and the Board. He submits that those cases are binding only on those parties and has no precedential value to bind DALA in this case.

Although I have doubts about the Respondent's argument regarding my ability to rely on cases resolved by way of a consent decree, the Board's position is supported by cases resolved by final decisions, not just consent decrees. *See, e.g., In the Matter of John Diggins, MD*, RM-21-0175 (DALA Recommended Decision at p. 10, Jan. 21, 2022); *In the Matter of Angela Steinhardt, MD.*, RM-20-1232 (Final Decision and Order, Aug. 3, 2022). As the Board previously noted, "any criminal behavior is 'antithetical to a commitment to preserve life, alleviate suffering, and restore health.'" *In the Matter of Walter Simmons, M.D.*, RM-22-0141 (Final Decision and Order, Feb. 2, 2023), *citing In the Matter of John Diggins, in turn citing Raymond*, 387 Mass. at 712.; *see also In the Matter of Joel Habener, M.D.*, No. 2008-055 (Final Decision and Order, Mar. 17, 2010) ("There is no dispute that the Board can impose discipline for criminal charges and convictions, including criminal acts that do not result in prosecution or conviction"). "With or without formal guilty verdicts, OUIs have in the past provoked board discipline." *Diggins, supra*, at 10.

I see no reason to deviate in this case from this well-settled principle. The Respondent's conduct, which he admits and resulted in a criminal charge—even if the case was ultimately dismissed—undermines the public confidence in the integrity of the medical profession.⁸

2. Mitigation evidence

To start, I dismiss the Board's characterization of the Respondent as minimizing, evading disclosure, and unable to tell the truth. For example, it argues that the Respondent downplays his level of intoxication when he talks about his offense and “evaded disclosure of damning information” when he did not tell his fellowship director about his case “until absolutely necessary in preparation for the mitigation hearing.” The Board also faults him for failing to disclose his 2015 offense to his residency program. And the Board characterizes his incorrect answers in his 2021 application as deflecting responsibility.

I disagree. First, the Respondent admitted his guilt in court and to the Board (both when it interviewed him and at the hearing before me). He did not dispute his level of intoxication nor argue it was less than suggested. Second, I find no fault with the Respondent for not disclosing information he was not obligated to disclose to others; for example, the Respondent was not under any obligation to tell his fellowship director about his arrest. Indeed, most people would not immediately disclose their arrest to their employer if they did not have to—especially just after being arrested and trying to figure out what happens next. Lastly, unlike Board counsel, I credit the Respondent's explanation that he based his answers in the application on his (understanding of his) lawyer's advice.

⁸ Despite these conclusions, I nevertheless held a hearing so the Petitioner could make a factual record to support his argument that there should not be a finding of misconduct under *Levy/Raymond* given the specific facts of this case. The Petitioner is free to argue this to the Board and/or on appeal.

With that, the Board should consider the following mitigating evidence.

The criminal offense was a misdemeanor, not a felony. *Commonwealth v Lahey*, 80 Mass. App. Ct. 606, 611 n. 6 (2011)(OUI first offense is a misdemeanor).

The Respondent's conduct was not in any way connected to his work: he was not on duty, on his way to work, or even scheduled to work the next day. There is no evidence that he has been impaired while on duty (or even on call). There is no evidence that the Respondent has an alcohol problem or regularly misuses alcohol outside of work.⁹ Contrast *Diggins, supra* and *In the Matter of Daniel Marotta, MD.*, Board of Registration in Medicine, Adjudicatory Case No. 2018-035 (Consent Order, August 9, 2018) (OUI conviction *and* alcohol abuse).

Since meeting with the Board, the Respondent has abstained from using alcohol. He complied with every condition of his criminal probation. He participated in voluntary monitoring with PHS, and then extended his time with them. He complied with all PHS's requirements, which included a year and a half of random testing and counseling. Finally, his therapist does not believe his alcohol use needs to be monitored.

CONCLUSION

I conclude that the Board has proven its allegations by a preponderance of the evidence. The Board should take appropriate action.

⁹ The only evidence of alcohol abuse is the two OUIs. There is nothing in the record indicating the Respondent has misused alcohol at any other time and in any other setting. Putting aside whether driving impaired twice, five years apart, demonstrates alcohol abuse, there is no evidence the Respondent presently misuses alcohol. Moreover, he was able to abstain from using alcohol as part of the program he voluntarily entered at the Board's suggestion. Lastly, Dr. Sloan did not diagnose him with alcohol abuse disorder.

DIVISION OF ADMINISTRATIVE LAW APPEALS

Eric Tennen

Eric Tennen
Administrative Magistrate