

**COMMONWEALTH OF MASSACHUSETTS**

**Middlesex, ss.**

**Division of Administrative Law Appeals**

**Board of Registration in Medicine,  
Petitioner,**

**No. RM-22-141**

**Dated: SEP 22 2022**

**v.**

**Walter Simmons, M.D.,  
Respondent.**

**Appearance for Petitioner:**

Stephen C. Hootor, Esq.  
178 Albion Street  
Wakefield, MA 01880

**Appearance for Respondent:**

Walter Simmons, M.D. (pro se)  
4381 North 75th Street  
Scottsdale, AZ 85251

**Administrative Magistrate:**

Yakov Malkiel

**SUMMARY OF RECOMMENDED DECISION**

Discipline may be imposed upon the respondent physician, who committed a federal crime and was disciplined for that crime in another state.

**RECOMMENDED DECISION**

**Procedural Posture**

The Board of Registration in Medicine commenced disciplinary proceedings against Walter Simmons, M.D. and referred the case to the Division of Administrative Law Appeals.

Dr. Simmons entered an appearance in June 2022, soon after being released from federal prison.

The board's statement of allegations enumerated six alleged bases for discipline. In June 2022, complaint counsel moved for summary decision, submitting exhibits marked A-C. Dr. Simmons filed a response. In August 2022, the motion for summary decision was allowed as to the alleged bases of discipline marked B, D.1, and E.

Thereafter, complaint counsel withdrew the remaining alleged bases for discipline, marked A, C, and D.2. Simultaneously, complaint counsel moved for the issuance of a recommended decision that authorizes the imposition of discipline on Dr. Simmons.

### Findings of Fact

Based on the summary decision record, I find the following facts.

1. Dr. Simmons has been licensed to practice medicine for more than twenty years. He is not currently affiliated with any Massachusetts hospital. (Exhibit A.)
2. In July 2021, Dr. Simmons pleaded guilty in the U.S. District Court for the Northern District of Texas to three counts of Wrongful Use of a Unique Health Identifier. 42 U.S.C. § 1320d-6(a)(1), (b)(1). That offense is committed when a person knowingly uses personal health information in violation of HIPAA. *Id.* Dr. Simmons admitted specifically to obtaining three patients' personal information and writing prescriptions in those patients' names. The crimes occurred in approximately September 2014. Based on his guilty plea, the federal court sentenced Dr. Simmons to nine months in federal prison. (Exhibit B.)
3. In January 2022, the Tennessee Board of Medical Examiners disciplined Dr. Simmons through a consent order. The discipline was based on Dr. Simmons's criminal conviction. The consent order found Dr. Simmons to have engaged in "unprofessional, dishonorable or unethical conduct." Tenn. Code Ann. § 63-6-214(b)(1). In addition, the order found Dr. Simmons to have been convicted of "a felony, . . . any offense . . . relative to drugs or the practice of medicine, . . . [or] any offense involving moral turpitude." *Id.* § 63-6-214(b)(10). Dr. Simmons's Tennessee license was suspended for the period of his incarceration, and he was subjected to a two-year probationary period. (Exhibit C.)

### Analysis

The board is responsible for ensuring that physicians practice medicine in Massachusetts in a manner consistent with public health, welfare, and safety. G.L. c. 112, § 5. To that end, the board is authorized to impose disciplinary measures in various circumstances. The following bases for discipline are established here.<sup>1</sup>

*Basis B.* Applicable regulations permit discipline to be imposed based on a physician's "[c]onviction of any crime." 243 C.M.R. § 1.03(5)(a)(7). Dr. Simmons has been convicted of a crime, namely the federal offense of Wrongful Use of a Unique Health Identifier. The board is therefore authorized to impose discipline on him.

*Basis D.1.* The board may discipline a physician reciprocally if the physician "has been disciplined in another jurisdiction . . . for reasons substantially the same as those set forth in [the governing statute and regulation]." 243 C.M.R. § 1.03(5)(a)(12). One of the reasons for Dr. Simmons's discipline in Tennessee was his conviction of a "felony" or certain categories of "offense[s]." Tenn. Code Ann. § 63-6-214(b)(10). That reason for discipline is subsumed within the Massachusetts regulation authorizing discipline upon the "conviction of any crime." 243 C.M.R. § 1.03(5)(a)(7). "[T]he [foreign] disciplinary action was taken on grounds for which discipline is authorized in Massachusetts," *Ramirez v. Board of Registration in Med.*, 441 Mass. 479, 485 (2004), and reciprocal discipline is consequently appropriate.

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<sup>1</sup> The bases for discipline enumerated in the statement of allegations but subsequently withdrawn were the following. Basis A alleged that Dr. Simmons had been convicted of a crime that "reasonably calls into question his ability to practice medicine." G.L. c. 112, § 5(g). Basis C alleged that Dr. Simmons had committed *conduct* (even if not criminal) that "places into question [his] competence to practice medicine." G.L. c. 112, § 5(c); 243 C.M.R. § 1.03(5)(a)(3). Basis D.2 sought reciprocal discipline based on Dr. Simmons having been disciplined in Tennessee for "unprofessional, dishonorable or unethical conduct." Tenn. Code Ann. § 63-6-214(b)(1).

*Basis E.* The board is empowered to punish behavior that demonstrates a lack of good moral character and undermines public confidence in the integrity of the medical profession. See *Raymond v. Board of Registration in Med.*, 387 Mass. 708, 713 (1982); *Levy v. Board of Registration in Med.*, 378 Mass. 519, 529 (1979). Although these predicates for discipline do not appear in the applicable statute or regulations, the board has adopted them “by adjudication.” *Raymond*, 387 Mass. at 713. The borderlines of the conduct that satisfies these predicates is not crystal clear. But all criminal conduct qualifies, based on the premise that such conduct is “antithetical to a commitment to preserve life, alleviate suffering, and restore health.” *Id.* at 712. See *BORIM v. Diggins*, No. RM-21-175, at 11 (DALA Jan. 21, 2022). Because Dr. Simmons committed crimes, he is subject to discipline under *Raymond* and *Levy*.

### Conclusion

For the foregoing reasons, the board may impose disciplinary measures on Dr. Simmons. The particulars of Dr. Simmons’s professional history and recent conduct are not well-developed in the current record. Dr. Simmons has expressed an intention to present the board with additional information relevant to the board’s selection of a specific disposition.

Division of Administrative Law Appeals

/s/ Yakov Malkiel

Yakov Malkiel

Administrative Magistrate