

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

July 2, 2020

Middlesex, ss.

Docket No. RM-17-1004

BOARD OF REGISTRATION IN MEDICINE, Petitioner

v.

JORG C. WINTERER, M.D., Respondent

RECOMMENDED DECISION

Appearance for the Petitioner

Lisa L. Fuccione, Esq.
Complaint Counsel
Board of Registration in Medicine
200 Harvard Mill Square, Suite 330
Wakefield, MA 01880

Appearance for Respondent:

Timothy J. Connors, Esq.
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105 Kenoza Ave.
Haverhill, MA 01830

Administrative Magistrate:

Mark L. Silverstein, Esq.

Summary of Decision

Physician Discipline - Suspension of license to practice medicine in the Commonwealth and conduct placing into question the physician's competence to practice medicine - Mootness dismissal for lack of jurisdiction recommended - Uncontested suggestion of physician's death during prehearing discovery phase of adjudicatory proceeding.

Background

This proceeding arises out of the Board of Registration in Medicine's November 22, 2017 suspension of Dr. Jorg Winterer's license to practice medicine in the Commonwealth, and its Statement of Allegations against him that included conduct placing into question the physician's competence to practice medicine. This conduct allegedly occurred at Partners Urgent Care, LLC's clinics in Newton and Watertown, Massachusetts in late December 2015, and in January and February 2016 and included (a) failure to maintain a sterile surgical field during the suturing of a lacerated finger, resulting in an infection; (b) taking a chest x-ray of a patient without covering the lower portion of her body with a protective shield, and misdiagnosing her with pneumonia; and (c) using Dermabond on a child's face too close to one of his eyes, resulting in the eye being glued shut and requiring eye repair by an ophthalmologist. *See Statement of Allegations* (Nov. 22, 2017, at paras. 13-15.)

Dr. Winterer denied these allegations in an answer he filed on December 20, 2017. The Board referred this matter to DALA on November 22, 2017 for making recommended findings of fact and necessary conclusions of law. Among the facts to be found in the recommended decision to be

issued here would have been whether the physician's alleged conduct at the urgent care clinics occurred.

I began the prehearing conference in this proceeding on December 26, 2017, but did not conclude it at the time, because Dr. Winterer was in the process of seeking one or more evaluations, and also because the Board was seeking leave to serve records-only subpoenas regarding Dr. Winterer's treatment of three patients in 2015 and 2016, at several urgent care centers. I allowed the issuance of these subpoenas upon various motions filed by the Board, beginning in late 2017 and continuing through late February 2019.

On May 6, 2020, Board Compliant Counsel filed a status report advising that, per an online search, it had learned that Dr. Winterer had died on July 30, 2019. Complaint counsel attached a copy of the obituary it had found online. Complaint counsel served a copy of the status report upon counsel for Dr. Winterer in this proceeding by email (in view of the ongoing COVID-19 Coronavirus health emergency that had shut down many offices, DALA included), but did not move, at the time, to dismiss this matter based upon Dr. Winterer's death.

Dr. Winterer's counsel filed no response to the status report and did not otherwise contest the suggestion of Dr. Winterer's death on July 30, 2019. The Board has inquired as to the status of this matter so that it can proceed with its final disposition. The inquiry suggests that although the Board has not moved formally to dismiss for mootness, it seeks a recommended decision to this effect and understood that its suggestion of death in its earlier status report proposed this outcome in effect.

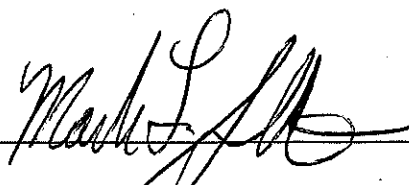
The suggestion of Dr. Winterer's death is uncontested. His death makes this proceeding

moot, and suggests strongly that the Statement of Allegations against the physician is moot as well. There remains nothing for DALA to adjudicate here as a result of the physician's death. In the circumstances, this proceeding is moot and should be dismissed as such by the Administrative Magistrate *sua sponte*, and without further notice, as the physician's death is uncontested despite sufficient opportunity to do so, pursuant to 801 C.M.R. § 1.01(7)(g)3. Neither party has suggested any outcome here other than a mootness dismissal. Accordingly, this proceeding is moot, and I recommend that the Board make its dismissal for mootness final. *See Bd. of Registration in Medicine v. Fraser*, Docket No. RM-13-224, Recommended Decision (Mass. Div. of Admin. Law App., May 4, 2017) *citing Bd. of Registration in Medicine v. Levy*, Docket No. RM-94-521, Recommended Final Decision (Mass. Div. of Admin. Law App., Dec. 5, 1996). I also recommend that the Board resolve the Statement of Allegations against Dr. Winterer, and his licensing status, in view of the physician's death.

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



Mark L. Silverstein
Administrative Magistrate

Dated: July 2, 2020