

COMMONWEALTH OF MASSACHUSETTS
DIVISION OF ADMINISTRATIVE LAW APPEALS

July 30, 2018

Suffolk, ss.

Docket No. RM-18-0326

BOARD OF REGISTRATION IN MEDICINE, Petitioner

v.

MANUEL S. YAPCHAI, M.D., Respondent

ORDER OF DEFAULT
RECOMMENDED DECISION

Appearance for the Petitioner

James Paikos, Esq.
Complaint Counsel
Board of Registration in Medicine
200 Harvard Mill Square, Suite 330
Wakefield, MA 01880

Appearance for Respondent:

(No appearance; mailing to last known address)
Dr. Manuel S. Yapchai
688 Charing Court
Rochester Hills, MI 48307

Administrative Magistrate:

Mark L. Silverstein, Esq.

Summary of Decision

The Massachusetts Board of Registration in Medicine issued a statement of allegations ordering a physician to show cause why he should not be disciplined by the Board for practicing medicine in violation of law and contrary to good and accepted medical practice, based upon his conviction of a crime (a Federal Court conviction for illegally distributing a controlled substance), and his being disciplined in March 7, 2017 by the Michigan Board of Medicine relative to his illegal distribution of a controlled substance. The Board transferred the matter to DALA for recommended findings of fact and conclusions of law. Following the physician's failure to appear for a previously-scheduled prehearing conference or respond to an order directing him to show cause why a default decision should not be issued, it is recommended that the Board make the statement of allegations against the physician final and proceed to determine what discipline is appropriate.

Background

Respondent Dr. Manuel S. Yapchai is a 1976 graduate of the University of the East, Ramon Magsaysay Memorial Medical Center in Quezon City, Republic of the Philippines. He was licensed to practice medicine in Massachusetts beginning on August 1, 1984. That license expired on December 11, 2005, when Dr. Yapchai failed to renew it.

This physician discipline-related adjudicatory proceeding was commenced on May 11, 2018, when the Massachusetts Board of Registration in Medicine ("the Board") issued a Statement of Allegations of professional misconduct against Dr. Yapchai and referred the matter to the Division of Administrative Law Appeals (DALA) for "recommended findings of fact and necessary conclusions of law."

The Order of Reference directed Dr. Yapchai to show cause why the Board should not discipline him for practicing medicine in violation of law and contrary to good and accepted medical practice, based upon (1) his Federal Court conviction on March 7, 2018 for illegally distributing a

controlled substance (Oxycodone and Promethazine with Codeine), for which he was sentenced on the same day to imprisonment for one day, time served, and two years of supervised release; and (2) his being disciplined on September 13, 2017 by the Michigan Board of Medicine relative to his illegal distribution of a controlled substance.¹ The Board's Statement of Allegations asserted the following grounds for imposing appropriate discipline upon Dr. Yapchai in Massachusetts in view of the Federal Court conviction and out-of-state professional discipline:

(1) Proof satisfactory to a majority of the Board that the physician has been convicted of a crime, a ground for physician discipline pursuant to 243 C.M.R. § 1.03(5)(a)7;

(2) Proof satisfactory to a majority of the Board that the physician lacks good moral character and engaging in conduct that undermines the public confidence in the integrity of the medical profession, *citing Raymond v. Bd. of Registration in Medicine*, 387 Mass. 708, 443 N.E.2d 391 (1982), and *Levy v. Bd. of Registration*, 378 Mass. 519, 392 N.E.2d 1036 (1979); and

(3) Proof satisfactory to a majority of the Board that the physician has been disciplined in another jurisdiction "in any way by the proper licensing authority for reasons substantially the same" as those set forth in M.G.L. c. 112, § 5 or 243 C.M.R. § 1.03(5), specifically in this case:

(a) The physician's conviction of a crime (which is a ground for physician discipline in Massachusetts pursuant to 243 C.M.R. § 1.03(5)(a)7, upon proof satisfactory to a majority of the Board that the physician has been convicted of a crime);

(b) The physician's lack of good moral character and his engaging in conduct that

¹/ The record includes a copy of a Consent Order issued by the Disciplinary Subcommittee of the Michigan Board of Medicine, dated September 13, 2017, which recites Dr. Yapchai's admission that he violated several subsections of the Michigan Public Health Code (M.C.L. §§ 333.16221(a), (b)i, (b)vi, c(iv) and e(iii), and his agreement to the revocation of his license to practice medicine in the State of Michigan.

undermines the public confidence in the integrity of the medical profession (which is a ground for physician discipline in Massachusetts upon proof satisfactory to a majority of the Board that the physician lacks good moral character and has engaged in conduct that undermines the public confidence in the integrity of the medical profession, per *Raymond and Levy*);

(c) Practicing medicine deceitfully, or engaging in conduct which has the capacity to deceive or defraud, (which is a ground for physician discipline in Massachusetts upon proof of this conduct sufficient to a majority of the Board, pursuant to 243 C.M.R. § 1.03(5)(a)10);

(d) Engaging in conduct that places into question the physician's competence to practice medicine, including but not limited to gross misconduct in the practice of medicine, or practicing medicine fraudulently, or beyond its authorized scope, or with gross incompetence, or with gross negligence on a particular occasion or negligence on repeated occasions (which is a ground for physician discipline in Massachusetts upon proof of this conduct sufficient to a majority of the Board, pursuant to M.G.L. c. 112, § 5, eighth para. (c) and 243 C.M.R. § 1.03(5)(a)3); and

(e) Issuing prescriptions for controlled substances that were not issued for a legitimate medical purpose or in the usual course of the physician's professional practice (a ground for physician discipline in Massachusetts based upon violation of M.G.L. c. 94C § 19(a), which that section makes subject to discipline under M.G.L. c. 94C, §§ 32, 32A, 32B, 32C, 32D, 32E, 32F, 32G and 32H "as applicable").

The Board's Statement of Allegations also stated that the adjudicatory proceeding it commenced would be conducted in accordance with the provisions of M.G.L. c. 30A (the Massachusetts Administrative Procedure Act) and the Standard Rules of Adjudicatory Practice and Procedure, 801 C.M.R. § 1.01 *et seq.* In an accompanying cover letter, the Board notified Dr. Yapchai that, pursuant to 801 C.M.R. § 1.01(6)(d), he was required to file an answer within 21 days of his receipt of the Statement of Allegations.

On May 14, 2018, DALA issued to the Board and Dr. Yapchai a notice acknowledging the commencement of this proceeding and its assignment of a DALA docket number. The copy of the acknowledgment notice that DALA mailed to Dr. Yapchai was addressed to him at 688 Charing

Court, Rochester Hills, Michigan, the only address of record and the sole address to which the Board had mailed its Statement of Allegations and Order of Reference. The copy mailed to Dr. Yapchai was not returned to DALA by the United States Postal Service, and his receipt of the acknowledgment notice is therefore presumed.

Several days later (on May 17, 2018) DALA issued a Notice of Prehearing Conference to both Dr. Yapchai and the Board by regular mail. It stated that DALA had scheduled a prehearing conference in this proceeding for June 28, 2018 at 2:00 p.m. for the purposes of setting a hearing date and discussing matter related to adjudication—identifying and narrowing the issues to be adjudicated, identifying the parties' respective hearing witnesses, pre-hearing discovery and motion practice, and the possibility of resolving all or any of disputed issues by agreement. The copy of the prehearing conference notice that DALA mailed to Dr. Yapchai was addressed to him at 688 Charing Court, Rochester Hills, Michigan. It, too, was not returned to DALA by the United States Postal Service, and its receipt by Dr. Yapchai is therefore presumed.

I held the scheduled prehearing conference at 2:00 p.m. on June 28, 2018. The Board appeared for the conference. Dr. Yapchai did not appear at the conference, and no one appeared on his behalf. The Board advised me that it had sent its Statement of Allegations to Dr. Yapchai by both certified and regular mail, and that while he had not accepted delivery of the certified mailing, the regular mailing to him was not returned to the Board by the United States Postal Service. The Board also advised me that it had no other address for Dr. Yapchai other than 688 Charing Court, Rochester Hills, Michigan 48307 and, in addition, that Dr. Yapchai had not filed an answer to the Statement of Allegations. After waiting thirty minutes, I terminated the prehearing conference and

advised the Board that I would issue to Dr. Yapchai an order to show cause why I should not issue a recommended decision granting an order of default against him, and that the order would be sent to him by regular mail at his Rochester, Michigan address.

On July 2, 2018, I issued an order directing Dr. Yapchai to show cause by July 17, 2018 why, in view of his failure to appear for the scheduled prehearing conference on June 28, 2018, I should not issue a default decision recommending that the Board of Registration in Medicine make its May 11, 2018 Statement of Allegations final and proceed to determine what discipline is appropriate. A copy of the order was mailed to Board Complaint Counsel and to Dr. Yapchai at 688 Charing Court, Rochester Hills, Michigan, still the only address of record and the sole address to which the Board had mailed its Statement of Allegations and Order of Reference. The copy mailed to Dr. Yapchai was not returned to DALA by the United States Postal Service, and his receipt of the order to show cause is therefore presumed. Dr. Yapchai filed no response to the order to show cause, and the response time set by the order has expired.

Disposition

In view of Dr. Yapchai's failure to appear for the scheduled prehearing conference or respond to the order to show cause that followed, the appropriate outcome here is a default decision in the Board's favor. This disposition is appropriate when, as here, the physician's conduct or inaction shows that he does not intend to contest the Board's Statement of Allegations. It may be implemented pursuant to 801 C.M.R. § 1.01(7)(a)1, which provides that "[a]n Agency or Party may by motion request the Presiding Officer to issue any order or take any action not inconsistent with

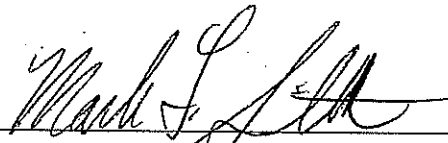
law or 801 CMR 1.00.” See *Bd. of Registration in Medicine v. Owens*, Docket No. RM-17-840, Order of Default - Recommended Decision (Mass. Div. of Admin. Law App., Jan. 29, 2018).

For the reasons set forth above, I now issue this Order of Default - Recommended Decision, pursuant to 801 C.M.R. § 1.01(7)(a)1. I recommend that the Board make final both the recommended decision and the allegations of misconduct against Dr. Yapchai set forth in the Statement of Allegations, and proceed to determine what discipline is appropriate.

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 30, 2018