

COMMONWEALTH OF MASSACHUSETTS

Middlesex, SS.

Board of Registration in Medicine
Adjudicatory Case No. 2020-043

_____)
In the Matter of)
)
NEIL E. TOBACK, M.D.)
_____)

STATEMENT OF ALLEGATIONS

The Board of Registration in Medicine (Board) has determined good cause exists to believe the following acts occurred and constitute a violation for which a licensee may be sanctioned by the Board. The Board therefore alleges Neil E. Toback, M.D. (Respondent) has practiced medicine in violation of law, regulations, or good and accepted medical practice as set forth herein. The investigative docket number associated with this order to show cause is Docket No. 20-099.

Biographical Information

1. The Respondent was born on January 12, 1941. He graduated from Universite Catholique de Louvain in Belgium in 1969 and his current practice specialty is dermatology. The Respondent was licensed to practice medicine in Massachusetts under certificate number 35708 beginning on July 23, 1973 and until January 12, 2005. He is currently licensed to practice medicine in Rhode Island and was previously licensed in Maine, New York, and Pennsylvania.

Factual Allegations

2. On August 14, 2019 the Rhode Island Board of Medical Licensure and Discipline (State of Rhode Island) disciplined the Respondent when it accepted the Respondent's Consent

Order (Rhode Island Consent Order). In the Rhode Island Consent Order, the Respondent stipulated the State of Rhode Island had the authority to discipline him under R.I. Gen. Laws § 5-37-5.1(24); R.I. Gen. Laws § 5-37-2.1; and R.I. Gen. Laws § 5-37-5.1. R.I. Gen. Laws § 5-37-5.1(24) defines “unprofessional conduct” as “[v]iolating any provision or provisions...chapter [5-37 of the Rhode Island General Laws] or the rules and regulations of the [Board] or any rules and regulations promulgated by the [Director] or of any action, stipulation, or agreement of the [Board].”

3. In the Rhode Island Consent Order, the Respondent stipulated he engaged in the practice of medicine without a current license between July 1, 2018 and August 28, 2018 and failed to complete continuing medical education (CME) requirements for two renewal periods between July 1, 2014 and June 30, 2018 after asserting he had in his 2014 and 2016 license renewal applications. The Respondent stipulated said allegations, if true, would subject him to discipline.

Legal Basis for Proposed Relief

A. Pursuant to 243 CMR 1.03(5)(a)12, the Board may discipline a physician upon proof satisfactory to a majority of the Board, that said 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 G.L. c. 112, § 5 or 243 CMR 1.03(5), specifically:

1. The Respondent engaged in conduct that undermines the public confidence in the integrity of the medical profession. *See Levy v. Board of Registration in Medicine*, 378 Mass. 519 (1979); *Raymond v. Board of Registration in Medicine*, 387 Mass. 708 (1982).

2. The Respondent continued to practice while his registration was lapsed, suspended, or revoked. *See* 243 CMR 1.03(5)(a)(8).
3. The Respondent fraudulently procured his certificate of registration or its renewal. *See* 243 CMR 1.03(5)(a)(1).

The Board has jurisdiction over this matter pursuant to G.L. c. 112, §§ 5, 61 and 62. This adjudicatory proceeding will be conducted in accordance with the provisions of G.L. c. 30A and 801 CMR 1.01.

Nature of Relief Sought

The Board is authorized and empowered to order appropriate disciplinary action, which may include revocation or suspension of the Respondent's license to practice medicine. The Board may also order, in addition to or instead of revocation or suspension, one or more of the following: admonishment, censure, reprimand, fine, the performance of uncompensated public service, a course of education or training or other restrictions upon the Respondent's practice of medicine.

Order

Wherefore, it is hereby **ORDERED** that the Respondent show cause why the Board should not discipline the Respondent for the conduct described herein.

By the Board of Registration in Medicine,



George Abraham, M.D.
Board Chair

Date: October 8, 2020

Rhode Island Consent Order



IN THE MATTER OF:
Neil Toback, MD
License #: MD 04272
Case #: C18-1115

CONSENT ORDER

Neil Toback, MD ("Respondent") is licensed as a physician in Rhode Island. The Rhode Island Department of Health ("RIDOH") Board of Medical Licensure and Discipline ("Board") makes the following

FINDINGS OF FACT

1. Respondent has been a licensed physician in the State of Rhode Island since January 27, 1971. Respondent is a June 1, 1969 graduate of Catholic University of Louvain, in Belgium.
2. The Board initiated a complaint against Respondent on the grounds that, between July 1, 2018 and August 28, 2018, Respondent had engaged in the practice of medicine in Rhode Island without a license.
3. Licenses to practice medicine in Rhode Island must be renewed every other year. Renewal is conditioned upon submission to the Board, on or before June 1 of every even year, an application, executed together with a registration form and renewal fee. The renewal period—the period during which the renewed license will be in effect—ranges from July 1 of every even year through June 30, two years later.

4. Included in the registration form is the following attestation ("Attestation"): *"I have completed all applicable CE (Continuing Education) requirements for the renewal period stated in the Rules and Regulations for my profession."*
5. In 2018, the Board did not receive any renewal materials from Respondent relative to renewal of his license, so Respondent's license was not renewed on July 1, 2018.
6. Respondent appeared in front of the Investigative Committee and admitted that it was his usual practice to have his office staff renew his license to practice medicine for him.
7. Respondent admitted that, in 2018, neither he nor his staff submitted the necessary materials to apply for renewal of his license, but that he nevertheless continued to practice medicine at his usual place of business and engage in the practice of medicine between July 1, 2018 and August 28, 2018. Respondent made it clear his failure to apply for renewal was inadvertent.
8. The Investigative Committee issued a subpoena requesting documentary evidence from Respondent of his having completed CME requirements for the 2014 and 2016 license renewal periods, i.e., from July 1, 2014 through June 30, 2018.
9. In 2014 and 2016, the registration forms submitted for renewal of Respondent's license are marked "Y," meaning "yes," relative to the Attestation, indicating that Respondent attested to having completed all applicable CME requirements for both renewal periods.
10. Respondent admitted that he did not complete the renewal questions and that someone in his office did this for him.
11. Respondent supplied evidence of having completed some CME prior to July 1, 2014 and after July 1, 2018, but provided no evidence of having completed any CME between July 1, 2014 and June 30, 2018.

12. Respondent has violated R.I. Gen. Laws § 5-37-5.1(24), which defines "unprofessional conduct" as including "[v]iolating any provision or provisions of . . . chapter [5-37 of the Rhode Island General Laws] or the rules and regulations of the [Board] or any rules and regulations promulgated by the [Director] or of an action, stipulation, or agreement of the [Board]."

13. Respondent violated R.I. Gen. Laws § 5-37-2.1, which provides in relevant part that *"every physician licensed to practice medicine within this state shall, in connection with biannual registration, on or before the first day of June in each even-numbered year, provide satisfactory evidence to the board of medical licensure and discipline that in the preceding two (2) years the practitioner has completed a prescribed course of continuing medical education established by the appropriate medical or osteopathic society and approved by rule or regulation of the director or by the board of licensure and discipline."*

14. Respondent has further violated R.I. Gen. Laws § 5-37-5.1, having committed unprofessional conduct by engaging in the practice of medicine without a current license.

Based on the foregoing, the parties agree as follows:

1. Respondent admits to the jurisdiction of the Board.
2. Respondent has agreed to this Consent Order and understands that it is subject to final approval of the Board, and this Consent Order is not binding on Respondent until final ratification by the Board.
3. If ratified by the Board, Respondent hereby acknowledges and waives:
 - a. The right to appear personally or by counsel or both before the Board;
 - b. The right to produce witnesses and evidence on his behalf at a hearing;

- c. The right to cross examine witnesses;
- d. The right to have subpoenas issued by the Board;
- e. The right to further procedural steps except for those specifically contained herein;
- f. Any and all rights of appeal of this Consent Order;
- g. Any objection to the fact that this Consent Order will be presented to the Board for consideration and review; and

h. Any objection that this Consent Order will be reported to the National Practitioner Data Bank and Federation of State Medical Boards, as well as posted on RIDOH's public web site.


- 4. Respondent agrees to a Reprimand on his license.
- 5. Respondent hereby agrees to successfully 40 hours of category 1 CME within the next 12 months, of which 4 CME hours must pertain to the special topics approved by RIDOH. Respondent will send notice of compliance with this condition to DOH.PRCOMPLIANCE@health.ri.gov within 30 days of completion.
- 6. Respondent agrees to pay within five days of the ratification of this Consent Order an administrative fee to the Board with a check for \$1050.00 made payable to the "Rhode Island General Treasurer" for costs associated with investigating the above-referenced complaint. Respondent will send notice of compliance with this condition to DOH.PRCOMPLIANCE@health.ri.gov within 30 days of mailing the above-referenced payment.
- 7. If Respondent violates any term of this Consent Order after it is signed and accepted, the Director of the Department of Health shall have the discretion to

impose further disciplinary action, including immediate suspension of his medical license. If the Director imposes further disciplinary action, Respondent shall be given notice and shall have the right to request a hearing within 20 days of the suspension and/or further discipline. The Director of the Department of Health shall also have the discretion to request a hearing after notice to Respondent of a violation of any term of this Consent Order. The Board may suspend Respondent's license, or impose further discipline, for the remainder of Respondent's licensure period if any alleged violation is proven by a preponderance of evidence.

Signed this 5th day of August 2019.


Neil Toback, MD

Ratified this 4th day of August 2019 by the Board of Medical Licensure and Discipline.


Nicole Alexander-Scott, M.D., M.P.H.
Director
Rhode Island Department of Health
3 Capitol Hill, Room 401
Providence, Rhode Island 02908