COMMONWEALTH OF MASSACHUSETTS

Middlesex, SS. Board of Registration in Medicine

Adjudicatory Case No. 2021-012

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In the Matter of )

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JOSEPH M. TOSHACH, M.D. )

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**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 Joseph M. Toshach, 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 isDocket No. 20-112.

Biographical Information

1. The Respondent was born on February 15, 1965 and graduated from New York Medical College in June 1990. The Respondent is certified in Pediatrics by the American Board of Pediatrics. The Respondent has been licensed to practice medicine in Massachusetts under certificate number 237163 since August 6, 2008, in Maine since June 22, 1993, in New Hampshire since 2011 and New Jersey since 2017.

Factual Allegations

1. On November 7, 2019 the New Hampshire Board of Medicine (“New Hampshire Board”) reprimanded the Respondent’s license to practice medicine, assessed a $1,000 administrative fine and $2,000 in investigative and prosecution costs, and ordered the Respondent to complete continuing medical education for at least four hours in the area of history taking, evaluating, and assessing the headache patient when it accepted the Respondent’s Settlement Agreement (“New Hampshire Settlement Agreement”). The New Hampshire Settlement Agreement is attached hereto as Attachment A and incorporated herein by reference.
2. On May 1, 2016 at 10:15 a.m. thirteen-year-old Patient A was brought to Concord (NH) Hospital Emergency Department, where she was diagnosed with a migraine headache, prescribed and administered pediatric doses of migraine medications at 11:45 a.m., and ordered to undergo an outside brain MRI within three days of discharge.
3. The Respondent was called into the ED at 3:30 p.m. for a pediatric consult where he encountered Patient A asleep, did not wake her and relied on the ED physician’s earlier neurological assessment, and attributed Patient A’s somnolence to the sedating effects of the medication and reported lack of sleep the night before.
4. At 8:40 p.m. the Respondent was asked to admit Patient A to the pediatric floor and was informed of an elevation in Patient A’s temperature at 9:00 p.m. Patient A was admitted to the pediatric floor at 10:00 p.m. and at 10:53 p.m. Patient A was obtunded with dried blood in both nostrils, non-verbal, but able to squeeze a nurse’s hand and open her eyes upon request.
5. At 12:53 a.m. on May 2, 2016 Patient A was less responsive and her pupils were unequal. The Respondent arrived at Patient A’s bedside and ordered an urgent head CT scan, before which Patient A suffered cardiac arrest requiring resuscitation.
6. A head CT scan revealed the presence of a 3.8 cm mass in the fourth ventricle, mass effect, brainstem and cerebellar compression, and irreversible downward herniation. Patient A was transferred to Dartmouth Hitchcock Hospital for neurosurgery, from which Patient A never regained consciousness and died on May 6, 2016.
7. On September 10, 2018 a $2,500,000 medical malpractice settlement payment was made on behalf of the Respondent related to the care of Patient A on May 1, 2016 at Concord Hospital.
8. The Respondent stipulated if a disciplinary hearing took place the New Hampshire Board Hearing Counsel would have proved the Respondent engaged in professional misconduct in violation of RSA 329:17, VI (c), and or/Med 501.01 (a), and/or Med 501 (e) (1).
9. The New Hampshire Board found the Respondent engaged in professional misconduct in violation of RSA 329:17, VI (c), and or/Med 501.01 (a), and/or Med 501 (e) (1). Legal Basis for Proposed Relief
10. 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:
11. 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).
12. The Respondent committed misconduct in the practice of medicine. *See* 243 CMR 1.03(5)(a)(18).
13. The Respondent committed malpractice. *See* G.L. c. 112 §61; 243 CMR 1.03(5)(a)(17).

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,

Signed by George Abraham, M.D.

George Abraham, M.D.

Board Chair

Date: March 25, 2021

To obtain a copy of the out-of-state disciplinary order, please contact the appropriate state’s medical licensing board directly. A list of state medical boards and contact information is available at <https://www.fsmb.org/contact-a-state-medica-board/>. You may also obtain a copy of the out-of-state disciplinary order by submitting a public records request (PRR) with the Massachusetts Board of Registration in Medicine. PRR forms and additional information can be found at <https://www.mass.gov/board-of-registration-in-medicine-public-records>.