

COMMONWEALTH OF MASSACHUSETTS

Middlesex, SS.

Board of Registration in Medicine
Adjudicatory Case No. 2022-030

_____)
In the Matter of)

MARK R. BRODY, M.D.)
_____)

FINAL DECISION AND ORDER

Procedural History

The Board initiated this matter by issuing a Statement of Allegations (SOA) against the Respondent on September 9, 2022 and simultaneously referring the SOA to the Division of Administrative Law Appeals (DALA). The SOA ordered the Respondent to show cause why he should not be disciplined for having been disciplined by the Rhode Island Board of Medical Licensure and Discipline (RI Board) for reasons substantially the same as those set forth at G.L. c. 112, § 5 and 243 CMR 1.03(5).

On November 4, 2022, each party moved for summary decision and on March 23, 2023, the DALA Administrative Magistrate, Kenneth Forton (Magistrate) issued his Recommended Decision (Recommended Decision). The Magistrate concluded that the Board is entitled to summary decision based on the fact of Respondent's RI Board discipline (RI Discipline)¹ for grounds that are substantially the same as those contained in G.L. c. 112, § 5 and 243 CMR 1.03(5). Specifically, Respondent, in connection with the RI Discipline, admitted to (a) engaging in unprofessional conduct, (b) substandard treatment of Patients A, B, C & D, and (c) violating record keeping requirements. Respondent filed an undated letter registering his objections to the Recommended Decision (hereinafter, Respondent's Objections). Complaint Counsel submitted a Memorandum on Disposition and Respondent did not.

At its meeting on September 7, 2023, the Board reviewed the Recommended Decision, Respondent's Objections and Petitioner's Memorandum on Disposition and heard from the parties on the issue of sanction. The Board rejects Respondent's Objections. Respondent cannot re-litigate the RI Board's findings of fact or appeal the RI Discipline in this forum. Indeed, having consented

¹ For clarity, RI Discipline includes the RI Board's Consent Order issued April 14, 2021, the Consent Order issued July 14, 2021 and the Consent Order issued December 8, 2021.

to the RI Board's factual findings and the discipline imposed—essentially waiving his rights of appeal—Respondent cannot now challenge them. Board hereby adopts the Recommended Decision and incorporates it into its Final Decision and Order, granting Petitioner's Motion for Summary Decision and denying Respondent's Motion for Summary Decision.

Discussion

The Magistrate found Respondent entered into three Consent Orders with the RI Board. In the RI Board's Consent Order dated April 14, 2021, Respondent admitted to engaging in unprofessional conduct² by advising his patients not to receive any COVID-19 vaccination for various reasons. In the RI Board's Consent Order dated July 14, 2021, Respondent admitted to unprofessional conduct in his treatment of Patients A, B, C and D, notably failing to perform physical exams, inadequately documenting these patient encounters and providing primary care without any training in that specialty.

The Magistrate concluded that the legal grounds disciplined by the RI Board are substantially the same as those found in M.G.L. c. 112, §5 and 243 CMR 1.03(5). Specifically, the Magistrate found Respondent engaged in unprofessional conduct,³ practiced medicine deceitfully, or engaged in conduct which has the capacity to deceive or defraud,⁴ and engaged in dishonesty, fraud, or deceit which is reasonably related to the practice of medicine,⁵ as well as conduct that undermines the public confidence in the medical profession.⁶ The Magistrate found Respondent's admitted conduct in the Consent Order issued July 14, 2021, to be substantially similar to conduct which places into question Respondent's competence to practice medicine⁷ and that violates a rule or regulation of the Board, i.e., its medical record requirements at 243 CMR 2.07(13)(a).

When determining a sanction, the Board is guided by the question of what discipline is necessary to protect the public. *In the Matter of Richard J. Pedro, D.O.*, Board of Registration in Medicine, Adjudicatory Case No. 2018-054 (Final Decision & Order, December 16, 2021)(“[t]he

² “in violation of R.I. Gen. Laws § 5-37-5.1(19) by sending unsolicited letters to his patients advising them not to receive any of the COVID vaccinations for a variety of reasons that he later admitted were false claims and that revealed his lack of expertise in the field and even a basic understanding of molecular biology.”

³ 243 CMR 1.03(5)(a)(3)

⁴ 243 CMR 1.03(5)(a)(10).

⁵ G.L. c. 112, § 61(5).

⁶ *Levy v. Board of Registration in Medicine*, 378 Mass. 519 (1979) and *Raymond v. Board of Registration In Medicine*, 378 Mass. 709 (1982). The recognized articulation of this basis of discipline is “undermines the public confidence in the integrity of the medical profession.”

⁷ 243 CMR 1.03(5)(a)(3).

Board tailors its sanction to deter other physicians from engaging in similar misconduct and thereby protect public confidence in the profession”).

When fashioning a sanction concerning false and deceptive statements, the Board has imposed a range of sanctions from indefinite suspension to censure depending on the circumstances of each case and accounting for the severity of the deceit involved and any mitigating factors. See *In the Matter of Ryan J. Welter, M.D.*, Board of Registration in Medicine, Adjudicatory Case No. 2019-029 (Final Decision & Order, March 11, 2021)(indefinite suspension stayed upon entry into probation agreement for false and deceptive statements on website for hair restoration practice) and *In the Matter of Boris Bergus, M.D.*, Board of Registration in Medicine, Adjudicatory Case No. 2017-004 (Final Decision & Order, June 27, 2019)(\$10,000 fine and indefinite suspension stayed upon entry into probation agreement requiring outside monitoring of credentialing application, advertising and media communications for three years).⁸

Respondent’s treatment of Patients A, B, C and D fell below the standard of care. In substandard care/negligence cases, the Board considers, among other things, the severity of the negligence or degree of deviation from the standard of care, the impact of the physician's conduct, the number of patients affected and any mitigating factors that may be present. See *In the Matter of John C. Clapp, M.D.*, Board of Registration in Medicine, Adjudicatory Case No. 2013-004 (Final Decision & Order, April 16, 2015).⁹

Respondent was found to have violated patient record keeping requirements. The Board has previously stated that “record-keeping failures are not 'technical' violations, because accurate

⁸ On the opposite end of the spectrum, the Board has censured a physician’s license for misstating credentials after considering mitigating factors, see *In the Matter of Gloria Johnson-Powell, M.D.*, Board of Registration in Medicine, Adjudicatory Case No. 99-05-30C (Consent Order, March 3, 1999). The Board has imposed a reprimand in cases where repeat misrepresentation of credentials is evident. *In the Matter of Henry J. Ramini M.D.*, Adjudicatory Case No. 88-23-SU (Final Decision and Order, March 1, 1989) (reprimand, \$10,000 fine and 100 hours of public service to be performed within one year).

⁹ The Board has disciplined substandard patient care with sanctions ranging from reprimand to revocation. Where there has been substantial deviation from the standard of care and multiple patients involved, the Board has determined that revocation is appropriate. See *In the Matter of Viorel Boborodea, M.D.*, Board of Registration in Medicine, Adjudicatory Case No. 04-61-DALA (Final Decision & Order, March 15, 2006)(revocation, five patients involved). In cases where the departure from the standard of care is less severe, but repeated and more than one patient is involved, the Board has determined that suspension from practice is the appropriate sanction, with a return to practice conditioned upon entry into a probation agreement requiring monitoring. See *In the Matter N. Raj Birudavol, M.D.*, Board of Registration in Medicine, Adjudicatory Case No. 02-16-DALA (Final Decision & Order, July 21, 2004)(suspension stayed conditioned on entering Probation Agreement based on substandard care of four patients over three years). Where there are multiple instances of substandard care or negligence when treating one patient, the Board has often imposed a reprimand. See *In the Matter of Debra Little, M.D.*, Adjudicatory Case No. 2017-038 (Final Decision & Order, December 2, 2021).

and current medical records are absolutely essential in maintaining a patient's health and welfare.” See *In the Matter of Vernon Kellogg, M.D.*, Board of Registration in Medicine, Adjudicatory Case No. 2007-044 (Final Decision and Order, May 19, 2010).¹⁰ See also *In the Matter of Joseph V. Thakuria, M.D.*, Board of Registration in Medicine, Adjudicatory Case No. 2018-046 (Final Decision and Order, August 4, 2022)(reprimand and \$5,000 fine for failing to disclose on license application disciplinary action by health care entity, practicing medicine deceitfully or engaging in conduct that has the capacity to deceive or defraud, and violation of Board regulations on maintenance of patient record, *inter alia*).¹¹

The gravamen of Respondent’s violations center around his false and misleading statements concerning the safety and efficacy of the COVID-19 vaccinations. Respondent misstated the safety and efficacy of the COVID-19 vaccinations and offered unsupported theories to his patients in advising them not to accept any COVID-19 vaccine. The Board has sanctioned misleading statements concerning specialty board certification, *In the Matter of Henry J. Ramini M.D.*, Adjudicatory Case No. 88-23-SU (Final Decision and Order, March 1, 1989) and for submitting falsified documents with license applications, *In the Matter of John R. Dungan, Jr., M.D.*, Board of Registration in Medicine, Adjudicatory Case No. RM-91-1990 (Final Decision & Order, April 24, 1996). Where a physician has falsely stated his specialty board credentials over time and to other entities in addition to the Board, the Board has imposed an indefinite license suspension to be stayed upon entry into a Probation Agreement requiring outside monitoring, *In the Matter of Boris Bergus, M.D.*, Board of Registration in Medicine, Adjudicatory Case No. 2017-004 (Final Decision & Order, June 27, 2019). Respondent’s false and misleading statements to his patients are of a different species than those typically meriting Board discipline. Arguably his misstatement of the safety and efficacy of COVID-19 vaccines are more significant to maintaining public health and safety.

In addition, Respondent has not fully remediated his practice consistent with the RI Board’s April 14, July 14 and December 8, 2021 Consent Orders. Respondent’s RI license proceeded step-

¹⁰ “The Respondent’s fraud, violations of G.L. c. 94C, refusal to cooperate with the Board, and inadequate record keeping are sufficient, in and of themselves, to merit revocation of the Respondent’s license, but in addition, the Respondent has engaged in fraudulent conduct to conceal that he has failed to maintain required medical malpractice. Such uninsured practice exposes patients to unacceptable risk, and is not permitted.”

¹¹ *In the Matter of Yashwant S. Chaudhri, M.D.*, Board of Registration in Medicine, Adjudicatory Case No. 2021-008 (Consent Order, October 22, 2022)(reprimand premised on California discipline for failure to properly maintain a patient record).

wise through increasing levels of restrictions; from reprimand to suspension and ultimately to surrender. In the April 14, 2021 Consent Order, Respondent agreed to complete and successfully pass the Center for Professional Education for Professionals Probe course. In the July 14, 2021 Consent Order, Respondent agreed to successfully complete a clinical competency evaluation. In the December 8, 2021 Consent Order, Respondent admits to not passing the clinical competency evaluation required by the July 14, 2021 Consent Order and surrendered his license acknowledging he failed to complete the all the coursework, retraining and testing set forth in the prior two consent orders. The Board, in furthering its statutory mandate to protect the health, safety and welfare of Commonwealth residents, need not act as a safe haven for physicians who avoid completing remedial requirements of out-of-state discipline and then seek to practice in Massachusetts. Compare *Anusavice v. Board of Registration in Dentistry*, 451 Mass. 786, 796 (2008).

Sanction

Given the findings of fact and conclusions of law set forth in the Recommended Decision, the Board hereby INDEFINITELY SUSPENDS the Respondent's inchoate right to renew his license to practice medicine. Respondent may petition the Board to stay its Order of Indefinite Suspension at such a time when he can demonstrate he has fully and successfully complied with the RI Discipline and that his RI medical license is current and in good standing.

The Respondent shall provide a complete copy of this Final Decision and Order, with all exhibits and attachments, within ten (10) days by certified mail, return receipt requested, or by hand delivery to the following designated entities: any in- or out-of-state hospital, nursing home, clinic, other licensed facility, or municipal, state, or federal facility at which he practices medicine; any in- or out-of-state health maintenance organization with which he has privileges or any other kind of association; any state agency, in- or out-of-state, with which he has a provider contract; any in- or out-of-state medical employer, whether or not he practices medicine there; the state licensing boards of all states with which he has any kind of license to practice medicine; the Drug Enforcement Administration – Boston Diversion Group; and the Massachusetts Department of Public Health Drug Control Program. The Respondent shall also provide this notification to any such designated entities with which he becomes associated for the duration of this suspension or subsequent Probation Agreement. The Respondent is further directed to certify to the Board within ten (10) days that he has complied with this directive. The Board expressly reserves the authority

to independently notify, at any time, any of the entities designated above, or any other affected entity, of any action taken.

The Respondent has the right to appeal this Final Decision and Order within thirty (30) days, pursuant to G.L. c. 30A §§14 and 15, and G.L. c. 112, § 64.



DATE: September 7, 2023

Julian Robinson, M.D.
Chair