

STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS
DEPARTMENT OF HEALTH
BOARD OF MEDICAL LICENSURE AND DISCIPLINE
THREE CAPITOL HILL
PROVIDENCE, RHODE ISLAND 02908

IN THE MATTER OF:	:	
	:	
	:	
William Kyros, M.D.	:	BMLD
	:	License application
Respondent.	:	
	:	

DECISION

I. INTRODUCTION

The above-entitled matter came before a hearing committee¹ of the Board of Medical Licensure and Discipline (“Board”) pursuant to a Time and Notice of Hearing and a Specification of Charges² issued to William Kyros, M.D. (“Respondent”). The Respondent applied for re-licensing (“License”) as a physician pursuant to R.I. Gen. Laws § 5-37-1 *et seq.* A hearing was held on December 7, 2017, January 31 and May 17, 2018 with both parties represented by counsel. The Respondent filed a brief and both parties made oral arguments on August 8, 2018.

II. JURISDICTION

The Board has jurisdiction over this matter pursuant to R.I. Gen. Laws § 5-37-1 *et seq.*, R.I. Gen. Laws § 42-35-1 *et seq.*, 216-RICR-40-05-1, *Licensure and Discipline of Physicians Regulation*, and 216-RICR-10-05-4 *Practices and Procedures Before the Rhode Island Department of Health Regulation*.

¹ The Committee members were Sandra Coletta, Joseph Dowling, M.D., and Leonard Green. See R.I. Gen. Laws § 5-37-5.2.

² See Department’s Exhibits One (1) and Two (2) (Notice and Time of Hearing and Specification of Charges both dated November 3, 2017).

III. ISSUE

Whether the Respondent should be re-licensed pursuant to his 2009 Agreement to Cease Practice ("Agreement"). See Department's Exhibit Three (3).³

IV. MATERIAL FACTS AND TESTIMONY

It is undisputed that in 2009, the Respondent signed the Agreement. The Agreement recited the facts that the Respondent is Board Certified in General Psychiatry and that during the Board's investigation of an April, 2009 boundary violation complaint against the Respondent, the Board received information concerning three (3) other boundary violations by the Respondent with women who were his patients. The Agreement found that the boundary violations dated back to the early 1990's and more recently that year. By signing the Agreement, the Respondent waived his right to a hearing and agreed to cease practicing any branch of medicine and agreed to go for an evaluation at the Sante Center for Healing, Argyle, Texas ("Sante Center"). The Agreement provided that the Board would make a final determination on final sanctions after it reviewed and considered the evaluation report from the Sante Center.

³ R.I. Gen. Laws § 5-37-4 speaks of the refusal by the Board to grant an original license after application. However, since this matter arose out of the Agreement, the Specification of Charges alleged that the Respondent violated R.I. Gen. Laws § 5-37-5.1(24). It then further requested that a Hearing Committee make findings of fact and conclusions of law and if the charges are sustained, said Committee determine the discipline to be imposed on the Respondent. R.I. Gen. Laws § 5-37-5.1 defines "unprofessional conduct" to include as follows:

Unprofessional conduct. – The term "unprofessional conduct" as used in this chapter includes, but is not limited to, the following items or any combination of these items and may be further defined by regulations established by the board with the prior approval of the director:

(24) Violating any provision or provisions of this chapter or the rules and regulations of the board or any rules or regulations promulgated by the director or of an action, stipulation, or agreement of the board

The issue before the Board is whether the Respondent should be allowed to be re-licensed as a physician. This is not an issue of whether the Respondent engaged in unprofessional conduct by violating a Board order and if so, what discipline should be imposed, but rather the issue is whether because of previous complaints of unprofessional conduct that resulted in the Agreement should the Respondent be allowed to be re-licensed in light of the requirements in the Agreement. The way the Agreement was written is that any decision by the Board is a final determination of sanctions. The determination by the Committee is a determination of sanctions pursuant to the Agreement.

It is undisputed that the Respondent went to the Sante Center for an evaluation. The report by the Sante Center ("Report") deferred the issue of competency to the Board and found that the Respondent had not been fully truthful or was in denial about his actions. The Report found that his underlying issues required exploration in psychodynamic oriented psychotherapeutic supervision, personal therapy, and monitored practice. The Report recommended that if the Respondent returned to practice that he be monitored. See Department's Exhibit Four (4).

The Respondent⁴ testified that he signed the Agreement in August, 2009 and as part of that Agreement, he went to the Sante Center. The Respondent testified that he did not commit the allegations referenced in the Agreement and disputed that there were violations from the 1990's. He testified that the complaint in 1991 was retaliatory by a ringleader with a very checkered past and that he was exonerated in 1991 as well as from the 1999 complaint. He testified that the Board did not hear about either incidence in 1991 or 1999. The Respondent testified that the 2008 complaint was a false complaint from a patient who complained that he said inappropriate things to her because her husband found out she was flashing her chest to truckers and "shacking" up with them.⁵ He testified that the 2009 complaint was from an addicted patient. He testified that his attorney told him to sign the Agreement, but he disagreed with it.

The Respondent testified that he believed he has complied with the Report except for the return to practice because the Board would not let him. He testified that he has completed all required continuing medication education ("CME") credits since 2009. He testified that on August 27, 2009 which was seven (7) days after his treatment at the Sante Center, his attorney wrote to the Board and again on September 30, 2009 regarding what his next steps should be. See

⁴ The Respondent was initially called by the Department as a Department witness so that this summary of testimony is from his direct by both parties and cross-examination.

⁵ The patient involved in this complaint testified on behalf of the Department. Her testimony as to what occurred that day was very different from the Respondent's testimony.

Respondent's Exhibits Three (3) and Four (4) (said letters). He testified that he does not remember receiving a response from the Board regarding the September 30, 2009 letter. He testified that he received an evaluation on August 22, 2010 from a psychiatrist, Dr. Edward Brown. He testified that he saw Dr. Brown in 1991 and 1992 after the 1991 complaint so contacted him again in 2009 on advice from his attorney since they had not heard from the Board. He testified that he saw Dr. Brown from 2009 to 2011. See Respondent's Exhibit Five (5) (August 2, 2010 letter to the Board from Dr. Edward M. Brown). He testified that he thinks Dr. Brown's report satisfies the Report since he engaged in psychodynamic and psychotherapeutic personal therapy with him.

The Respondent testified that he was also treated by Dr. Gene Jacobs for three-and-a-half years and started with him after starting with Dr. Brown. He testified that he engaged in psychodynamic and psychotherapeutic personal therapy with Dr. Jacobs. He testified that his attorney suggested that since more time had passed that he contact the Board and provide another psychiatric report so that he provided Dr. Jacobs' report in 2013. See Respondent's Exhibit Six (6) (Dr. Jacobs' letter of May 13, 2013 detailing his treatment of the Respondent for the last three-and-a-half years). He testified that in 2013, his attorney wrote to the Board and they met with Dr. James McDonald, the Board administrator. He testified that he received a forensic psychiatry report from Dr. Daniel Harrop after seeing him for an extensive evaluation and submitted that report to the Board. See Respondent's Exhibit Eight (8) (August 19, 2013 letter from Dr. Harrop indicating that he has consulted with Dr. Brown and Dr. Jacobs on this matter and performed a forensic evaluation of Respondent on his fitness for duty finding he is not medically or psychiatrically impaired). He testified that his License application was denied in 2013 and he did not have the money to challenge that decision.

The Respondent testified that he hired a new attorney in 2014 and in 2015, they met with Dr. McDonald regarding being re-licensed. He testified that after the meeting, the Board requested that he return to the Sante Center for evaluation and go to the Center for Personalized Education for Physicians (“CPEP”). He testified that his clinical competence has never been under issue until this came up and he disagreed with it. See Respondent’s Exhibits 13, 14, 15 (letters from Respondent’s attorney to the Board in 2016 regarding application for License); 18 and 20 (Respondent’s March 23 and April 13, 2017 reinstatement application); 12 (November 5, 2015 letter from Dr. Harrop to Board updating his 2013 report); 22 (September 11, 2017 letter from Board to Respondent finding he should return to the Sante Center for evaluation and to CPEP because of the lapse in time); 26 (October 3, 2017 letter from Board to Respondent denying his reinstatement application); and 27 (Respondent’s October 12, 2017 request for hearing).

The Respondent testified that under the Agreement he agreed to abide by the recommendations of the Sante Center and feels that he has and that he did not receive guidance from the Board. He testified that the Board is to make the final decision after it considers the Report, but he does not agree with the Agreement and only signed it because his attorney told him to. He testified that the last time he saw a patient was in 2009.

Dr. James McDonald (“McDonald”), Chief Administrative Officer of the Board testified on behalf of the Department. He testified that he reviews complaints and the statute authorizes recouping costs for proceedings against physicians not to exceed \$10,000 and he has kept track of the staff time and stenographic invoices. See Department’s Exhibits 8 (staff time for himself and the attorneys, stenographic invoices) and 8A (copies of some stenographic invoices).⁶

⁶ After hearing, the spreadsheet was updated to include the costs of all hearings for a total cost of \$4,858.41. See Department’s email of September 26, 2018 to Respondent’s attorney and the Hearing Committee’s hearing officer and made part of Department’s Exhibit Eight (8) (spreadsheet of Department’s costs of administrative hearing).

McDonald testified that he has read the Agreement⁷ and reviewed the Report in detail. He testified that he is sure the Board committees considered the psychiatrists' reports submitted by the Respondent, but presumably the licensing committee did not find them compelling or convincing and he himself did not either. He testified that the Respondent has been out of practice for a long time and the reports do not prove that he is competent to practice medicine. He testified that CPEP is a physician reentry program with mock patients, mock history, and mock physical findings so it is a formal structure to assess someone's practice and is tailored to the specialty of the physician. He testified that there is no report showing the Respondent was clinically competent to practice medicine. He testified that Dr. Jacobs did not assess clinical competency, but rather addressed any psychiatric conditions that would be a barrier to practice. He testified that physicians go to CPEP when they have a large gap in practicing medicine such as time off to raise a family. He testified that the Respondent went in front of several committees and no one voted to grant him a License and they were most worried about his character and his competency.

V. DISCUSSION

A. Arguments

The Respondent argued that he has complied with the Report in every possible way except those (e.g. practicing) that he could not accomplish. The Respondent argued that his reports from Doctors Brown, Jacobs, and Harrop meet the Report's requirements for further treatment. The Respondent argued that he should be allowed to regain his License without any further restrictions.

The Department argued that under the Agreement, the Board is to determine the appropriate sanctions upon review of the Report and since the Respondent has not been seeing

⁷ This is a summary of his direct and cross-examination as well as questioning from the Hearing Committee.

patients, his competency needs to be evaluated so that the Board wants the Respondent to return to the Sante Center for evaluation and complete CPEP to determine competency.

B. Standard of Review for an Administrative Hearing

It is well settled that in formal or informal adjudications modeled on the Federal Administrative Procedures Act, the initial burdens of production and persuasion rest with the moving party. 2 Richard J. Pierce, *Administrative Law Treatise* § 10.7 (2002). Unless otherwise specified, a preponderance of the evidence is generally required in order to prevail. *Id.* See *Lyons v. Rhode Island Pub. Employees Council 94*, 559 A.2d 130, 134 (R.I. 1989) (preponderance standard is the “normal” standard in civil cases). This means that for each element to be proven, the fact-finder must believe that the facts asserted by the proponent are more probably true than false. *Id.* When there is no direct evidence on a particular issue, a fair preponderance of the evidence may be supported by circumstantial evidence. *Narragansett Electric Co. v. Carbone*, 898 A.2d 87 (R.I. 2006).

C. The Agreement

The Agreement provided as follows:

Respondent agrees to cease practicing any branch of medicine. The Respondent agrees to go for an evaluation at the Sante Center for Healing, Argyle, TX. The evaluation report must be sent directly to the Board of Medical Licensure and Discipline. The Board will make a determination on final sanctions after it reviews and considers the evaluation report from Sante Center for Healing.

D. Whether Respondent Should be Licensed

The Respondent denied the allegations referenced in the Agreement and spent a long time testifying as to why he could not have committed the various alleged boundary violations. However, the issue before the Committee is the Respondent’s application for re-licensing and what sanctions should be imposed on the Respondent as provided for in the Agreement. Based on the

Agreement, the Board is to take into consideration the Sante Center's Report when determining any licensing and discipline issues.

The Report deferred to the Board the issue of competency to practice medicine. Competency is not just an issue of whether there are medical or psychiatric barriers to being able to practice medicine, but also whether someone is able to actually able to perform the job of practicing medicine. E.g. clinical competence. The Respondent has not treated a patient since 2009.

Pursuant to the Agreement and based upon the foregoing, the Committee unanimously found that in order to be re-licensed, the Respondent shall ensure competency by satisfactorily completing the fitness for duty and clinical competency assessment at CPEP and by following all recommendations from CPEP. The Respondent shall keep the Board informed of his progress at CPEP on an ongoing basis. Additionally, the Respondent shall satisfy all statutory requirements for licensing (e.g. CME's, application, fees).

E. Administrative Fees

The Department sought the imposition of administrative fees pursuant to R.I. Gen. Laws § 5-37-6.3.⁸ The Board voted unanimously to impose an administrative fee of \$2,000 for the cost of this hearing as the Respondent was found to have violated R.I. Gen. Laws § 5-37-5.1.⁹

⁸ R.I. Gen. Laws § 5-37-6.3 provides in part as follows:

Sanctions. – If the accused is found guilty of unprofessional conduct as described in § 5-37-6.2, the director, at the direction of the board, shall impose one or more of the following conditions:

(8) Assess against the physician the administrative costs of the proceedings instituted against the physician under this chapter; provided, that this assessment does not exceed ten thousand dollars (\$10,000).

⁹ While this matter was concerned with the denial of a licensing application, the basis for that refusal was the Agreement and the determination of what was to be the final sanction. See footnote three (3).

VI. FINDING OF FACTS

1. Pursuant to R.I. Gen. Laws § 5-37-1 *et seq.*, the Respondent applied on March 23 and April 14, 2017 to be re-licensed as a physician in the State of Rhode Island and his application was denied by letter dated October 10, 2017.
2. On November 3, 2017, a Notice and Time of Hearing and a corresponding Specification of Charges was issued to the Respondent by the Board.
3. A full hearing on this matter was held on December 7, 2017 and January 31 and May 17, 2018. The Respondent's brief was timely filed and oral argument was made on August 8, 2018.
4. The facts contained in Section IV and V are reincorporated by reference herein.¹⁰

VII. ORDER

Pursuant to the Agreement, the Committee found that in order to be re-licensed, the Respondent shall ensure competency by satisfactorily completing the fitness for duty and clinical competency assessment at CPEP and by following all recommendations from CPEP.¹¹ The Respondent shall keep the Board informed of his progress at CPEP on an ongoing basis. Additionally, the Respondent shall satisfy all statutory requirements for licensing (e.g. CME's, application, fees).

¹⁰ The Respondent submitted in his brief an extensive list of "proposed finding of facts." The Committee reviewed all the evidence and made determinations regarding the pertinent facts as set forth above. Those are the finding of facts.

¹¹ Note that this is not the Reentry to Clinical Program at CPEP. Those seeking to reenter practice after discipline are directed to CPEP's clinical competence assessment program. Along with clinical competency, the Respondent shall complete the fitness for duty evaluation. The method for completing these programs is determined by CPEP.

Entered this 14th day of November, 2018.



Sandra Coletta
Board Member

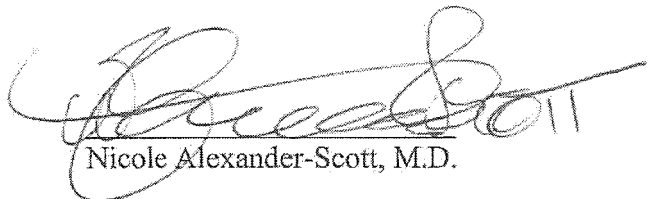


Joseph Dowling, M.D.
Board Member



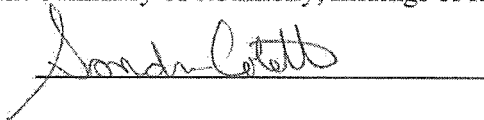
Leonard Green
Board Member

Ratified and approved by the Director of the Department of Health:

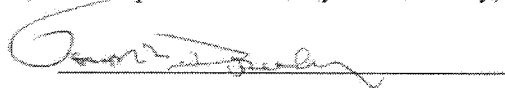


Nicole Alexander-Scott, M.D.

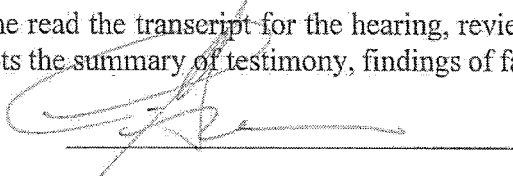
Sandra Coletta, hereby represents that she read the transcript for the hearing, reviewed the evidence in the administrative record, and adopts the summary of testimony, findings of facts, and Conclusions of Law as her own.




Joseph Dowling, M.D., hereby represents that he read the transcript for the hearing, reviewed the evidence in the administrative record, and adopts the summary of testimony, findings of facts, and Conclusions of Law as his own.



Leonard Green hereby represents that he read the transcript for the hearing, reviewed the evidence in the administrative record, and adopts the summary of testimony, findings of facts, and Conclusions of Law as his own.



Entered this 14th day of November, 2018.



Sandra Coletta
Board Member

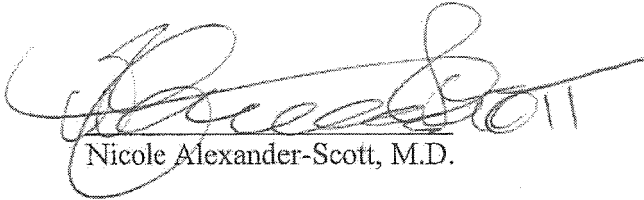


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Board Member



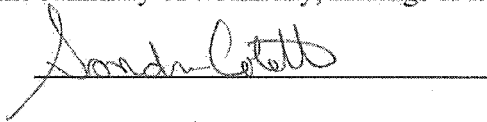
Leonard Green
Board Member

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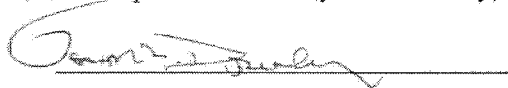


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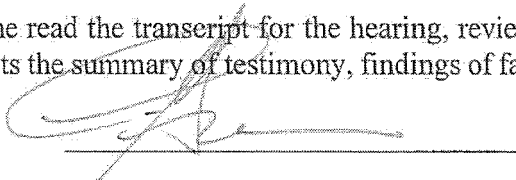
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NOTICE OF APPELATE RIGHTS

PURSUANT TO R.I. GEN LAWS § 5-37-7, THIS DECISION MAY BE APPEALED TO THE SUPERIOR COURT WITHIN THIRTY (30) DAYS AFTER THE DECISION OF THE DIRECTOR BY SERVING THE DIRECTOR WITH NOTICE OF APPEAL AND FILING SUCH NOTICE IN SUPERIOR COURT. APPEALS ARE GOVERNED BY THE ADMINISTRATIVE PROCEDURES ACT, R.I. GEN LAWS § 42-35-1 *et seq.*

CERTIFICATION

I hereby certify on the 14th of November 2018 that a copy of the within Decision and Notice of Appellate Rights was sent by email to Jackson Parmenter, Esq. as follows:

JParmenter@ksrplaw.com

