

III. ISSUE

Whether the Respondent should be licensed as a physician in the State of Rhode Island.

IV. MATERIAL FACTS AND TESTIMONY

The Respondent was called by the Board to testify. He testified that he completed his medical residency in 2000 and his first job was at Whittier Rehabilitation Hospital (“Whittier”) in Massachusetts where personality conflicts developed between himself and staff members. He testified that there was an investigation of him based on three (3) incidents about a nurse feeling belittled by him, a nurse feeling threatened by him, and an allegation of sexual harassment. He testified that this led to his dismissal from Whittier and a report being made to the Massachusetts Board of Registration of Medicine (“Massachusetts Board”). He testified that he entered into an agreement with the Massachusetts Board regarding his medical license (“Massachusetts License”) but a year and a half into his agreement, he covered a medical shift for a friend without approval from the Massachusetts Board as required by his agreement. He testified that as a result of this, the Massachusetts Board suspended his Massachusetts License and after two (2) years, he requested a stay of the suspension which was granted and he was re-licensed with five (5) years of probation. He testified that if he is licensed in Rhode Island he plans to continue working at his current employer, MassTex Imaging (“MassTex”).

The Respondent also testified on his behalf. He testified that he is a different person than he was ten (10) years since he is more aware of his behavior and interactions with other staff members. He testified that he works a ten (10) hour day at MassTex on a team with speech therapists. He testified that they travel to facilities to see patients and

perform evaluations depending on the level of study ordered. He testified that he now tries to have more and better communication with people.

In questioning by the undersigned, the Respondent testified that he is monitored by Dr. Baumer since it is stipulated in the agreement that he have a workplace monitor to detect any issues and none have arisen. He testified that he sees a therapist on a monthly basis. He testified that the monitoring is concerned with everything from mood, dress, to work performance.

Dr. Joane Baumer ("Baumer") testified on behalf of the Respondent. See Department's Exhibit Three (3) (resume). She testified that the Respondent is a member of her group medical practice, MassTex, in Massachusetts. See Respondent's Exhibit Three (3) (MassTex mission statement). She testified that the Respondent is its physical medicine and rehabilitation physician who is involved in delivering services directly to patients and working as an advisor to other physicians in the discipline of dysphagia. She testified that the patients are very vulnerable since they are mostly post-stroke patients or patients with traumatic brain injuries and the Respondent has been very valuable in assessing the global condition of these patients. She testified there are digital recordings of all evaluations so she can listen to him and the speech language pathologist communicating during the evaluations and can review the radiology and fluoroscopy findings. She testified that she samples the studies weekly and meets with the Respondent quarterly. She testified that she became the Respondent's monitor on July 20, 2011.³ She testified that if he is granted a License in Rhode Island, she would be

³ The Massachusetts Board by order dated July 20, 2011 modified the probation agreement to make Dr. Baumer a workplace monitor for Respondent. See Department's Exhibit Three (3).

willing to continue submit evaluations to the Board. She testified that there are patients the company used to treat in Rhode Island and would like to continue to treat.

On cross-examination, Baumer testified that her company has two (2) bases of operation: Massachusetts and Texas and consists of mobile clinics which operate in most New England states and the mobile clinics are like a self-contained doctor's office. She testified that the Respondent has been working for MassTex for over two (2) years and there have been no issues over quality of care. She testified that the company has a quality assurance program to review the quality of the studies.

The Respondent has been subject to a series of discipline in Massachusetts on his Massachusetts License. The Respondent's discipline was set forth in the Notice and relied on by the Board in denying the application.

1. The Respondent had his hospital privileges suspended at Whittier due to unprofessional behavior. See Respondent's application for License to the Board contained in Department's Exhibit Four (4).

2. On or about November 17, 2004, the Respondent entered into an assurance of discontinuance with the Massachusetts Board because of unprofessional conduct.⁴

3. On or about December 15, 2004, the Respondent entered into a probation agreement regarding his Massachusetts License with the Massachusetts Board.⁵

4. On or about January 12, 2005, the Rhode Island Board denied the Respondent's application for licensing in Rhode Island.⁶

5. On or about June 20, 2007, the Massachusetts Board suspended the Respondent's Massachusetts License for failure to comply with his probation agreement with the Massachusetts Board.⁷

⁴ National Practitioner Data Base ("NPDB") print-out of Respondent's licensing history contained in Department's Exhibit Four (4).

⁵ *Id.*

⁶ *Id.* The Respondent also entered into an agreement with the Board regarding re-applying after one (1) year subject to certain conditions.

⁷ The NPDB print-out contained in Department's Exhibit Four (4).

6. On or about July 9, 2008, the Respondent entered into a consent order with the Massachusetts Board indefinitely suspending his Massachusetts License concurrently with his 2007 suspension for practicing at a location prior to receiving Massachusetts Board approval as required by the probation agreement.⁸

7. On or about November 4, 2009, the Respondent entered into a probation agreement with the Massachusetts Board staying the suspension of his Massachusetts License and retroactively placing him on a five (5) period of probation ending April 23, 2012.⁹

The 2004 assurance of discontinuance provided that the Respondent agreed he would enter into a probation agreement with the Massachusetts Board that would include a behavioral health monitoring contract with Physician Health Service (“PHS”). In the assurance of discontinuance, the Respondent did not admit nor deny any of the Board’s allegations regarding his behavior but the Board found that his conduct had undermined the integrity of the medical profession and the Respondent agreed not to engage in any disruptive and unprofessional behavior in the work place in future.¹⁰ The Respondent entered into a probation agreement in 2004. However, as set forth above, his Massachusetts License was subsequently suspended in 2007 for violating the 2004 probation agreement but under the 2009 agreement that suspension was stayed. The 2009 agreement provides that the Respondent be monitored under a 2008 contract with the PHS and that he shall only work at a specific place of employment and be monitored by another physician and if he is licensed in another jurisdiction, his period of probation in Massachusetts may be increased.¹¹

⁸ *Id.*

⁹ *Id.*

¹⁰ *Id.*

¹¹ *Id.*

V. DISCUSSION

A. Arguments

The Respondent requested that the License be granted subject to a proposed probation agreement similar to his current agreement with the Massachusetts Board. See Respondent's Exhibit Two (2) (proposed agreement). The Respondent also argued that he has complied with his current probation agreement for several years, is seeing a therapist, has worked hard, and there have been no other incidences.

The Board argued that the Respondent initially applied in Rhode Island in 2005 which was denied by the Board and subsequently the Respondent was subject to further discipline in Massachusetts. The Board relied on the Respondent's disciplinary history and lack of self-awareness over his issues to argue that the Respondent's application should be denied.

B. Whether the Respondent Should be Licensed

R.I. Gen. Laws § 5-37-4 provides the grounds for denial of licensing and states in part as follows:

Refusal of licensure. – (a) The director at the direction of the board shall, after notice and hearing, in accordance with the procedures established in §§ 5-37-5.2 – 5-37-6.2, refuse to grant the original license provided for in this chapter to any physician and/or applicant:

(4) Who has been found guilty in another state of conduct which, if committed in Rhode Island, would constitute unprofessional conduct as defined in § 5-37-5.1 and regulations adopted under that section.

R.I. Gen. Laws § 5-37-5.1 includes the following definition of "unprofessional conduct":

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:

(21) Surrender, revocation, suspension, limitation of privilege based on quality of care provided, or any other disciplinary action against a license or authorization to practice medicine in another state or jurisdiction; or surrender, revocation, suspension, or any other disciplinary action relating to a membership on any medical staff or in any medical or professional association or society while under disciplinary investigation by any of those authorities or bodies for acts or conduct similar to acts or conduct which would constitute grounds for action as described in this chapter.

The Respondent has been subject to a series of discipline by the Massachusetts Board including a suspension of his Massachusetts License. The Respondent is currently licensed by the Massachusetts Board but with a probation agreement. The Respondent's multiple disciplines by the Massachusetts Board constitute unprofessional conduct pursuant to R.I. Gen. Laws § 5-37-5.1(21) and thus, they are grounds for denial of license pursuant to R.I. Gen. Laws § 5-37-4(a)(4). In addition, when given a chance to amplify the reasons for the monitoring and discipline imposed by the Massachusetts Board, the Respondent was unable to fully explain the reasons why he initially had issues at Whittier and why the Massachusetts Board would feel it necessary to monitor his behavior. While the Respondent testified that he has changed in ten (10) years, he gave no detailed or comprehensive explanation of his previous or current behavior and his summary of the occurrences at Whittier were at odds with the Whittier investigation.¹²

Based on the forgoing, the hearing committee finds that the Respondent's application for License shall be denied pursuant to R.I. Gen. Laws § 5-37-4(a)(4).

¹² In reviewing the exhibits surrounding the Whittier investigation, the allegations and issues involved were much more extensive than the three (3) incidences testified to by the Respondent. For example, the Respondent was apparently told to attend an anger management seminar by his supervisor (a doctor), his supervisor (a doctor) apparently counseled him about his behavior, and there were more than three (3) complaints. See Department's Exhibit Three (3).

VI. FINDING OF FACTS

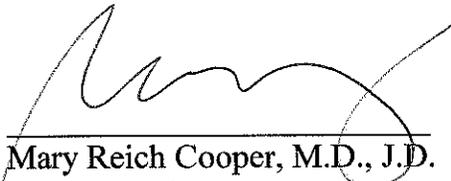
1. On or about November 1, 2010, the Respondent applied to be licensed as a physician in the State of Rhode Island. The Board denied the Respondent a License in the State.
2. The Respondent is currently licensed as a physician in Massachusetts subject to a 2009 probation agreement with the Massachusetts Board.
3. The Respondent has been subject to multiple instances of discipline by the Massachusetts Board.
4. The facts contained in Section IV and V are reincorporated by reference herein.

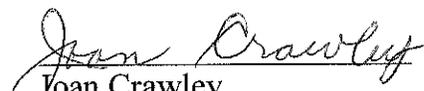
VII. ORDER

Based on the forgoing, the Board hereby orders the following:

Pursuant to R.I. Gen. Laws § 5-37-4(a)(4) and R.I. Gen. Laws § 5-37-5.1(21), the Respondent's multiple sanctions by Massachusetts and his failure to understand why are grounds for denial of License. Therefore, the Respondent's application for licensure as a physician is hereby denied.

Entered this 8 day of February, 2012.


Mary Reich Cooper, M.D., J.D.
Board Member

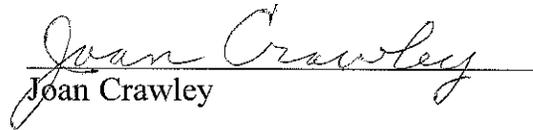

Joan Crawley
Board Member

Ratified and approved by the Director of the Department of Health

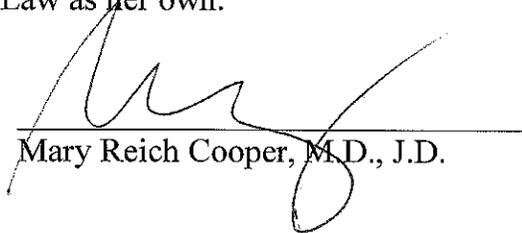


Michael Fine, M.D.

Joan Crawley, 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.


Joan Crawley

Mary Reich Cooper, M.D., J.D., 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.


Mary Reich Cooper, M.D., J.D.

NOTICE OF APPELLATE 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 A 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 this 10th day of February, 2012 that a copy of the within Decision and Notice of Appellate Rights was sent by first class mail, postage prepaid to Barbara Hayes Buell, Esquire, Smith Duggan Buell & Rufo, LLP, 55 Old Bedford Road, Lincoln, MA 01773 and by hand-delivery to Bruce McIntyre, Esquire, Department of Health, Three Capitol Hill, Providence, RI 02908.

Amy DiStilippo