

COMMONWEALTH OF PENNSYLVANIA
DEPARTMENT OF STATE
BEFORE THE STATE BOARD OF MEDICINE

PROTHONOTARY

2009 DEC 29 AM 10:37

Department of State

Commonwealth of Pennsylvania,
Bureau of Professional and
Occupational Affairs
v.
Fredric M. Mintzer, M.D.,
Respondent

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:
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File No. 08-49-06663

Docket No. 1452-49-08

COPY

FINAL ORDER

AND NOW, this 29th day of December, 2009, the State Board of Medicine (Board), having reviewed the entire record of this case established before the hearing examiner, and noting that although the Board did file a Notice of Intent to Review, neither party filed an application to review, **ADOPTS** the Adjudication and Order of the hearing examiner as the Final Adjudication and Order in this case. A copy of the Adjudication and Order is attached as Attachment A.

This order shall be retroactive to November 10, 2009, the effective date of the hearing examiner's adjudication and order.

**BUREAU OF PROFESSIONAL &
OCCUPATIONAL AFFAIRS**



**BASIL L. MERENDA
COMMISSIONER**

STATE BOARD OF MEDICINE



**OLLICE C. BATES, JR., M.D.
CHAIRMAN**

Hearing Examiner:

Suzanne Rauer, Esquire

Respondent's Attorney:

Anthony P. DeMichele, Esquire
O'BRIEN & RYAN, LLP
Hickory Pointe
2250 Hickory Road, Suite 300
Plymouth Meeting, PA 19462

Prosecuting Attorney:

Keith E. Bashore, Esquire

Board counsel:

Sabina I. Howell, Esquire

Date of mailing:

December 29, 2009

COMMONWEALTH OF PENNSYLVANIA
DEPARTMENT OF STATE
STATE BOARD OF MEDICINE

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Fredric M. Mintzer, M.D., :
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Docket No. 1452-49-08
File No. 08-49-06663

ADJUDICATION AND ORDER

Suzanne Rauer
Hearing Examiner

Commonwealth of Pennsylvania
GOVERNOR'S OFFICE OF GENERAL COUNSEL
Department of State
P.O. Box 2649
Harrisburg, PA 17105-2649
(717) 772-2686

ATTACHMENT A

DATE DISTRIBUTED 10-21-09
PROSECUTION _____
INSEL _____
HEARING EXAMINER _____
CLERK _____

HISTORY

This matter comes before the hearing examiner for the State Board of Medicine (Board) on an order to show cause (OSC) filed by the Commonwealth on August 4, 2008, alleging that Fredric M. Mintzer, M.D. (Respondent) is subject to disciplinary action under section 41(4) of the Medical Practice Act of 1985 (Act), Act of December 20, 1985, P.L. 457, *as amended*, at 63 P.S. § 422.41(4), as a result of disciplinary action taken against his license to practice medicine by the proper licensing authority of another state.

Respondent filed an answer to the OSC on September 25, 2008. A formal administrative hearing was held in Harrisburg on March 9, 2009. Keith E. Bashore, Esquire, was present on behalf of the Commonwealth. Anthony DeMichele, Esquire, appeared at the hearing on behalf of Respondent, who was also present. The parties waived the filing of post hearing briefs, and the record in this matter was closed on March 18, 2009 with the filing of the notes of transcript (N.T.).

FINDINGS OF FACT

1. Respondent holds a license to practice medicine and surgery in the Commonwealth of Pennsylvania, license number MD022742E, issued on August 8, 1979.

(Board records)

2. Respondent's license is active through December 31, 2010. (Board records)

3. At all times pertinent to the factual allegations, Respondent held a license to practice medicine and surgery in the Commonwealth of Pennsylvania. (Board records)

4. Respondent's address on file with the Board is 215 E. Camden Avenue, Apt. 07, Moorestown, NJ 08057. (Board records)

5. On June 21, 2007, the New Jersey State Board of Medical Examiners filed a complaint *In the Matter of the Suspension or Revocation of the License of Fredric M. Mintzer, M.D. to Practice Medicine & Surgery in the State of New Jersey*. (Commonwealth's Exhibit C-1)

6. On May 22, 2008, the New Jersey Board approved a Consent Order *In the Matter of the Suspension or Revocation of the License of Fredric M. Mintzer, M.D. to Practice Medicine & Surgery in the State of New Jersey*, pursuant to which Respondent agreed to surrender his license to practice medicine in New Jersey, which surrender was deemed to be a revocation of Respondent's license, and agreed to pay a civil penalty of \$30,000, together with other terms and conditions. (Commonwealth's Exhibit C-1)

7. Respondent's Consent Order entered into with the New Jersey Board was in resolution of allegations that Respondent engaged in conduct which constituted gross negligence, gross malpractice or gross incompetence which damaged or endangered the life, health, welfare, safety or property of two patients whom Respondent treated in the time period from 1997 to

2000, and/or repeated acts of negligence, malpractice or incompetence with regard to his treatment of those two patients. (Commonwealth's Exhibit C-1)

8. Respondent is a psychiatrist, currently practicing at the Consortium, a private non-profit mental health center in Philadelphia, with a majority of patients receiving Medicaid. (N.T. 10, 35-36)

9. After the New Jersey Board action, the U.S. Department of Health and Human Services undertook an investigation of Respondent with regard to his participation in the Medicare and Medicaid Programs. (N.T. 36)

10. On September 19, 2008, the U.S. Department of Health and Human Services notified Respondent that Respondent's exclusion from Medicare/Medicaid participation would not be implemented. (Respondent's Exhibit R-5)

11. Respondent has not been disciplined by the Pennsylvania Board at any time since Respondent was licensed in 1979. (N.T. 10; Board records)

12. In the spring of 2001, Respondent came under the treatment of Thomas C. Benfield, M.D., who has a psychiatric practice in Philadelphia, and Respondent's treatment by Dr. Benfield continued at the time of the hearing in this matter. (N.T. 30-31)

13. Respondent's treatment by Dr. Benfield consists of pharmacotherapy with episodic supportive/interpersonal psychotherapy. (Respondent's Exhibit R-2)

14. Respondent has been diagnosed with a significant, cyclic and recurrent depressive illness, sleep apnea, and difficulties in work and relationships, all of which have greatly improved under Dr. Benfield's care. (Respondent's Exhibit R-2)

15. Respondent was served with all pleadings, orders and notices filed of record in this matter. (Docket No. 0829-49-08)

CONCLUSIONS OF LAW

1. The Board has jurisdiction in this matter. (Findings of Fact, Nos. 1-3)
2. Respondent has been afforded reasonable notice of the charges against him and an opportunity to be heard in this proceeding, in accordance with the Administrative Agency Law, 2 Pa. C.S. §504. (Findings of Fact, No. 15)
3. Respondent is subject to disciplinary action under section 41(4) of the Act, 63 P.S. § 422.41(4), in that disciplinary action was taken against his license to practice medicine by the proper licensing authority of another state. (Findings of Fact, Nos. 5-7)
4. The Board is authorized to impose disciplinary or corrective measures or a civil penalty pursuant to section 42 of the Act, 63 P.S. § 422.42.

DISCUSSION

This action is brought under section 41(4) of the Act, 63 P.S. § 422.41(4), which provides in pertinent part as follows:

§ 422.41 Reasons for refusal, revocation, suspension or other corrective actions against a licensee or certificate holder

The Board shall have authority to impose disciplinary or corrective measures on a board-regulated practitioner for any or all of the following reasons:

* * *

(4) Having a license or other authorization to practice the profession revoked or suspended or having other disciplinary action taken, . . . by a proper licensing authority of another state, territory, possession or country, or a branch of the Federal Government.

The Commonwealth charged that Respondent is subject to disciplinary action because he had disciplinary action taken against his license by the proper licensing authority of another state. On June 21, 2007, the New Jersey State Board of Medical Examiners filed a complaint *In the Matter of the Suspension or Revocation of the License of Fredric M. Mintzer, M.D. to Practice Medicine & Surgery in the State of New Jersey*. On May 22, 2008, the New Jersey Board approved a Consent Order *In the Matter of the Suspension or Revocation of the License of Fredric M. Mintzer, M.D. to Practice Medicine & Surgery in the State of New Jersey*, pursuant to which Respondent agreed to surrender his license to practice medicine in New Jersey, which surrender was deemed to be a revocation of Respondent's license, and agreed to pay a civil penalty of \$30,000, together with other terms and conditions. Respondent's Consent Order entered into with the New Jersey Board was in resolution of allegations that Respondent engaged in conduct which constituted gross negligence, gross malpractice or gross incompetence which damaged or endangered the life, health, welfare, safety or property of two patients whom

Respondent treated in the time period from 1997 to 2000, and/or repeated acts of negligence, malpractice or incompetence with regard to his treatment of those two patients.

The New Jersey Board charged that with respect to patient JK, whom he began treating in 1996 for bipolar disorder, Respondent treated her for a period of several months as a sole practitioner when he did not have medical malpractice insurance, discussed his personal life with JK, revealing many intimate details of his life, and unilaterally terminated treatment on August 6, 2000 by electronic mail, stating it was not in JK's best interest to continue with him as her therapist. With respect to patient DB, whom Respondent began treating in 1997 for anxiety, panic attacks and substance abuse, the New Jersey Board charged that Respondent failed to take a history or prepare a chart, attempted to detoxify DB while dispensing Tylenol with codeine to DB every two to three weeks, covered for DB when she called in prescriptions to pharmacies as authorized by Respondent, disclosed information about his personal life to DB, and terminated treatment of DB in March 1999 after she was hospitalized for an overdose of a prescription medicine. In order to avoid further proceedings, Respondent agreed to surrender his license to practice medicine in New Jersey, which surrender was deemed a revocation for no less than five years, pay costs and penalties totaling \$40,000 over a five year period, and complete enumerated terms and conditions upon reapplication to the New Jersey Board for licensure.

The Commonwealth's evidence in this case consisted of certified copies of the New Jersey Board's records in this matter. In addition, Respondent did not dispute that his license to practice medicine in New Jersey had been disciplined. The Commonwealth has therefore proven the allegations in Count One of the OSC by a preponderance of the evidence, and Respondent is subject to disciplinary action under the Act at 63 P.S. § 422.41(4) in that disciplinary action was

taken against his license to practice medicine by the proper licensing authority of another state. The only question remaining is the sanction to be imposed.

Respondent testified that there were two brief periods of time when he did not have malpractice insurance. Respondent also testified that during the time period in question, from 1996 until 2000, he was in a great deal of emotional pain resulting from a separation and subsequent divorce, and denial of access to his very young daughter. Respondent admitted he discussed those issues with JK and DB. Respondent also admitted that he at times failed to maintain proper treatment records for JK. Respondent further testified that he terminated treatment with JK because she repeatedly asked him to assist her in committing suicide and would not accept his reasons for refusing to do so. With respect to DB, Respondent tried to centralize her treatment with Tylenol with codeine in an attempt to detox her, but when that did not work terminated his treatment of her. Respondent entered into treatment himself with Dr. Benfield in 2001, primarily for depression, and continued to see Dr. Benfield through the date of the hearing in this matter. Respondent and Dr. Benfield worked through Respondent's treatment of JK and DB, and Respondent appeared quite insightful with regard to his own actions. Respondent introduced a report from Dr. Benfield, without objection from the Commonwealth, in which Dr. Benfield opined that Respondent would not repeat such behavior nor endanger the welfare of his patients.

Lisa Blackburn, M.D. testified on behalf of Respondent that she is a psychiatrist and the chief medical officer at the Consortium, and previously held the position of staff psychiatrist at the Consortium. Dr. Blackburn stated that she had no concerns with Respondent's practice, that he performs thorough intake evaluations and documents appropriately, and that there have been

no complaints from clients regarding any boundary violations. Dr. Blackburn testified that Respondent is providing quality care and is a valuable employee at the Consortium.

The Board is authorized to impose disciplinary or corrective measures or a civil penalty pursuant to section 42 of the Act, 63 P.S. §422.42¹. A maximum civil penalty of up to one thousand dollars (\$1,000.00) for each and every violation of the Act is authorized under Section 39(b) of the Act, 63 P.S. § 422.39(b). A maximum civil penalty of up to ten thousand dollars (\$10,000.00) for each violation of the Act is authorized under Section 908 of the Medical Care Availability and Reduction of Error Act (Mcare Act), Act of March 20, 2002, P.L. 154, 40 P.S. §1303.908.² The Commonwealth Court of Pennsylvania stated in *Johnston v. State Board of Medical Education and Licensure*, 410 A.2d 103, 105 (Pa. Cmwlth. 1980), that “(b)ecause the Pennsylvania Board has no real independent ability to monitor the performance of Pennsylvania

¹ § 422.42. Types of corrective action.

(a) **Authorized actions.**—When the board is empowered to take disciplinary or corrective action against a board-regulated practitioner under the provisions of this act or pursuant to other statutory authority, the board may:

- (1) Deny the application for a license, certificate or any other privilege granted by the board.
- (2) Administer a public reprimand with or without probation.
- (3) Revoke, suspend, limit or otherwise restrict a license or certificate.
- (4) Require the board-regulated practitioner to submit to the care, counseling or treatment of a physician or a psychologist designated by the board.
- (5) Require the board-regulated practitioner to submit to take refresher educational courses.
- (6) Stay enforcement of any suspension, other than that imposed in accordance with section 40 [pertaining to temporary and automatic suspensions], and place a board-regulated practitioner on probation with the right to vacate the probationary order for noncompliance.
- (7) Impose a monetary penalty in accordance with this act.

² §1303.908. Licensure board-imposed civil penalty.

In addition to any other civil remedy or criminal penalty provided for in this act, the act of December 20, 1985 (P.L.457, No.112), known as the Medical Practice Act of 1985, or the act of October 5, 1978 (P.L.1109, No.261), known as the Osteopathic Medical Practice Act, the State Board of Medicine and the State Board of Osteopathic Medicine, by a vote of the majority of the maximum number of the authorized membership of each board as provided by law or by a vote of the majority of the duly qualified and confirmed membership or a minimum of five members, whichever is greater, may levy a civil penalty of up to \$10,000 on any current licensee who violates any provision of this act, the Medical Practice Act of 1985 or the Osteopathic Medical Practice Act or on any person who practices medicine or osteopathic medicine without being properly licensed to do so under the Medical Practice Act of 1985 or the Osteopathic Medical Practice Act. The boards shall levy this penalty only after affording the accused party the opportunity for a hearing as provided in 2 Pa.C.S. (relating to administrative law and procedure).

licensed physicians who conduct their practices out-of-state, we view the authority of the Pennsylvania Board to act swiftly upon official verification of disciplinary action in another state as most salutary." In determining a sanction, the primary consideration is that the Board is charged with the responsibility and authority to oversee the profession and to regulate and license professionals to protect the public health and safety. *Barran V. State Bd. of Medicine*, 670 A.2d 765, 767 (Pa. Cmwlth. 1996), *appeal denied*, 679 A.2d 230 (Pa. 1996).

Respondent surrendered his license to practice medicine in New Jersey, and the Commonwealth's prosecuting attorney recommended that the Board's duty to protect the health and safety of the citizens of this Commonwealth would best be carried out by revoking Respondent's Pennsylvania license. Under the circumstances of this case, including the length of time that has elapsed since the events which were the basis for the New Jersey Board action occurred, statements from Dr. Benfield which indicate that Respondent's behavior with JK and DB was aberrant and would in all likelihood not recur, and the decision by the U.S. Department of Health and Human Services that Respondent should not be excluded from the Medicare and Medicaid programs based upon the New Jersey Board action, the hearing examiner believes that revocation of Respondent's license, while appropriate, should immediately be stayed in favor of a probationary period of no less than five years, subject to terms and conditions.

Accordingly, based upon the above findings of fact, conclusions of law and discussion, the following order shall issue:

COMMONWEALTH OF PENNSYLVANIA
DEPARTMENT OF STATE
STATE BOARD OF MEDICINE

Commonwealth of Pennsylvania,
Bureau of Professional and
Occupational Affairs

v.

Fredric M. Mintzer, M.D.,
Respondent

Docket No. 1452-49-08
File No. 08-49-06663

ORDER

NOW, this 21st day of October, 2009, upon consideration of the foregoing findings of fact, conclusions of law and discussion, **Fredric M. Mintzer, M.D.**, license No. **MD022742E**, is subject to disciplinary action under section 41(4) of the Act, 63 P.S. §422.41(4), in that disciplinary action was taken against his license to practice medicine by the proper licensing authority of New Jersey. It is hereby **ORDERED** that Respondent's license to practice medicine and surgery in the Commonwealth is **REVOKED**, that revocation to be immediately **STAYED** in favor of **INDEFINITE PROBATION** for no less than five years and continuing until such time as Respondent provides documentary evidence to the Board that the New Jersey Board has reinstated Respondent's license to practice medicine without restriction in New Jersey, subject to the following terms and conditions:

GENERAL

1: Respondent shall abide by and obey all laws of the United States, the Commonwealth of Pennsylvania and its political subdivisions and all rules and regulations and laws pertaining to the practice of the profession in this Commonwealth or any other state or jurisdiction in which Respondent holds a license to practice the profession. Summary traffic violations shall not constitute a violation of this Order.

2. Respondent shall at all times cooperate with the Bureau of Professional and Occupational Affairs and its agents and employees in the monitoring, supervision and investigation of Respondent's compliance with the terms and conditions of this Order, including requests for, and causing to be submitted at Respondent's expense, written reports, records and verifications of actions that may be required by the Bureau of Professional and Occupational Affairs.

3. Respondent shall not falsify, misrepresent or make material omission of any information submitted pursuant to this Order.

4. Respondent shall notify the Bureau of Professional and Occupational Affairs, in writing, within five (5) days of the filing of any criminal charges against Respondent, the initiation of any legal action pertaining to Respondent's practice of the profession, the initiation, action, restriction or limitation relating to Respondent by a professional licensing authority of any state or jurisdiction or the Drug Enforcement Agency of the United States Department of Justice, or any other investigation, action, restriction or limitation relating to Respondent's privileges to practice the profession.

5. Respondent shall notify the Bureau of Professional and Occupational Affairs by telephone within 48 hours and in writing within five (5) days of any change of Respondent's home address, phone number, employment status, employer and/or change in practice.

VIOLATION OF THIS ORDER

6. Notification of a violation of the terms or conditions of this Order shall result in the **IMMEDIATE VACATING** of the stay order,

TERMINATION of the period of probation, and ACTIVATION of the revocation of Respondent's license(s) to practice the profession in the Commonwealth of Pennsylvania as follows:

a. The prosecuting attorney for the Commonwealth shall present to the Board's Probable Cause Screening Committee ("Committee") a Petition that indicates that Respondent has violated any terms or conditions of this Order.

b. Upon a probable cause determination by the Committee that Respondent has violated any of the terms or conditions of this Order, the Committee shall, without holding a formal hearing, issue a preliminary order vacating the stay of the within revocation, terminating this probation and activating the revocation of Respondent's license.

c. Respondent shall be notified of the Committee's preliminary order within three (3) business days of its issuance by certified mail and first class mail, postage prepaid, sent to the Respondent's last registered address on file with the Board, or by personal service if necessary.

d. Within twenty (20) days of mailing of the preliminary order, Respondent may submit a written answer to the Commonwealth's Petition and request that a formal hearing be held concerning Respondent's violation of probation, in which Respondent may seek relief from the preliminary order activating the revocation. Respondent shall mail the original answer and

request for hearing to the Bureau of Professional and Occupational Affairs' Prothonotary, 2601 North Third Street, P.O. Box 2649, Harrisburg, PA 17105, and a copy to the prosecuting attorney for the Commonwealth, as well as all subsequent filings in the matter.

e. If the Respondent submits a timely answer and request for a formal hearing, the Board or a designated hearing examiner shall convene a formal hearing within forty-five (45) days from the date of the Prothonotary's receipt of Respondent's request for a formal hearing.

f. Respondent's submission of a timely answer and request for a hearing shall not stay the revocation of Respondent's license under the preliminary order. The revocation shall remain in effect unless the Board or the hearing examiner issues an order after the formal hearing staying the revocation again and reactivating the probation.

g. The facts and averments in this Order shall be deemed admitted and uncontested at this hearing.

h. If the Board or hearing examiner after the formal hearing makes a determination against Respondent, a final order will be issued sustaining the revocation of Respondent's license and imposing any additional disciplinary measures deemed appropriate.

i. If Respondent fails to timely file an answer and request for a hearing, the Board, upon motion of the prosecuting

attorney, shall issue a final order affirming the revocation of Respondent's license.

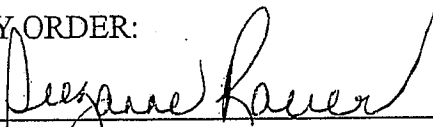
j. Respondent's failure to fully comply with any terms of this Order may also constitute grounds for additional disciplinary action.

7. Nothing in this Order shall preclude the prosecuting attorney for the Commonwealth from filing charges or the Board from imposing disciplinary or corrective measures for violations or facts not contained in this Order.

8. After successful completion of probation, Respondent may petition the Board to reinstate Respondent's license to unrestricted, non-probationary status upon an affirmative showing that Respondent has complied with all terms and conditions of this Order and is fit to practice.

This Order shall take effect twenty (20) days from the date of mailing shown below, unless otherwise ordered by the State Board of Medicine.

BY ORDER:



Suzanne Rauer
Hearing Examiner

For Respondent:

Anthony P. DeMichele, Esquire
O'BRIEN & RYAN, LLP
Hickory Pointe
2250 Hickory Road, Suite 300
Plymouth Meeting, PA 19462

Prosecuting Attorney:

Keith E. Bashore, Esquire
Commonwealth of Pennsylvania
GOVERNOR'S OFFICE OF GENERAL COUNSEL
Department of State
P.O. Box 2649
Harrisburg, PA 17105-2649

Date of mailing: 10.21.09

NOTICE

The attached Final Order represents the final agency decision in this matter. It may be appealed to the Commonwealth Court of Pennsylvania by the filing of a Petition for Review with that Court within 30 days after the entry of the order in accordance with the Pennsylvania Rules of Appellate Procedure. See Chapter 15 of the Pennsylvania Rules of Appellate Procedure entitled "Judicial Review of Governmental Determinations," Pa. R.A.P 1501 – 1561. Please note: An order is entered on the date it is mailed. If you take an appeal to the Commonwealth Court, you must serve the Board with a copy of your Petition for Review. The agency contact for receiving service of such an appeal is:

Board Counsel
P.O. Box 2649
Harrisburg, PA 17105-2649

The name of the individual Board Counsel is identified on the Final Order.