

STATE OF MAINE

SUPREME JUDICIAL COURT

DOCKET NO. BAR-11-14

ROBERT P. WEINBERG

Plaintiff

v.

JUDGMENT

BOARD OF BAR EXAMINERS

Defendant

Robert P. Weinberg, DO, petitions for a de novo review of the Board of Bar Examiners' refusal to certify him as having good character and fitness to practice law pursuant to M. Bar Admission R. 9. The parties presented testimony and documentary evidence at a two-day hearing held March 12 and 16, 2012, and submitted written arguments on March 26 and 29. After considering the conduct that led the Board to question Weinberg's character and fitness as well as his subsequent efforts to rehabilitate, I conclude that Weinberg is not a suitable candidate for admission to the bar pursuant to M. Bar Admission R. 9. I deny his petition pursuant to M. Bar Admission R. 9(d)(6)(E) and enter judgment accordingly.

The character and fitness requirements for admission to the practice of law in Maine derive from statute and the Bar Admission Rules. Title 4 M.R.S.

§ 805-A(2) (2011) instructs the Board to certify an applicant for admission upon finding “that the applicant is a person of good moral character and possesses sufficient learning in the law to practice as an attorney in the courts of this State.”

Maine Bar Admission Rule 9(a) provides:

Each applicant shall produce to the Board satisfactory evidence of good character and fitness to practice law. . . . The attributes of character and fitness to practice law that are relevant to this determination are those pertinent to the trust placed in lawyers by the public and clients as well as to the requirement that lawyers in this state comply with the Maine Bar Rules and the Maine Rules of Professional Conduct.

The purpose of the character and fitness requirements is to protect the public, not to punish the applicant by denying him a license as an attorney.

The applicant bears the burden of proving, by a preponderance of the evidence, that he has met these requirements for admission. *In re Application of Hughes*, 594 A.2d 1098, 1100-01 (Me. 1991). In considering the applicant’s petition, the Court may rely on “evidence upon which reasonable persons are accustomed to rely in the conduct of serious affairs.” M. Bar Admission R. 9(d)(6)(C)(v).

In interpreting these requirements, the American Bar Association’s Code of Recommended Standards for Bar Examiners is instructive, albeit not binding. *See* ABA, Code of Recommended Standards for Bar Examiners, Comprehensive Guide to Bar Admission Requirements viii-ix (2012) [hereinafter ABA Code]. The Code

suggests that the following factors “be considered in assigning weight and significance to prior conduct” when evaluating character and fitness. *Id.* at ix.

- the applicant’s age at the time of the conduct
- the recency of the conduct
- the reliability of the information concerning the conduct
- the seriousness of the conduct
- the cumulative effect of conduct or information
- the evidence of rehabilitation
- the applicant’s positive social contributions since the conduct
- the applicant’s candor in the admissions process
- the materiality of any omissions or misrepresentations

Id.

I. DISCUSSION

Weinberg graduated from the New England School of Law¹ in 2006. After a series of failed attempts at the Massachusetts bar examination, Weinberg passed the Maine bar examination, on his first attempt, in July of 2010. Based upon the information Weinberg submitted to it, the Maine Board of Bar Examiners determined that doubt remained “concerning [Weinberg’s] good character and fitness to practice law,” and therefore, pursuant to Rule 9(d)(1), the Board

¹ The school is now known as New England Law Boston.

conducted a hearing to determine whether Weinberg is a person of good character and is fit to practice law. After the hearing, the Board denied Weinberg a certificate of qualification. Weinberg thereafter filed a petition for admission to the bar with the Executive Clerk of the Supreme Judicial Court, seeking a determination by the Court that he is a person of good character and is fit to practice law.

Weinberg is where he is primarily because of three issues. First, he made a series of extremely bad decisions: he committed sexual misconduct toward a patient while acting as her physician, he used inappropriate litigation tactics (a continuing theme over the past twenty years) to prevent her testimony from being used against him in a hearing concerning his right to practice medicine, and then he lied about the status of his medical license while seeking work. Second, he is frequently disorganized and unfocused, as demonstrated by his inability to complete the steps necessary to regain his medical license² and by his handling of this case. Third, he responds with unusual levels of anger and belligerence when he feels threatened or challenged, as demonstrated by his actions in his case before the Massachusetts Board of Registration in Medicine; his actions in an eviction case in 2007-2008; and, even more troubling, in his handling of the proceeding on his petition in this Court after the Board of Bar Examiners rejected his application.

² I am aware that Weinberg has offered a different set of explanations for his failure to even file an application to begin the process that might allow him to regain his medical license.

I have considered each of the factors listed in the Code above in weighing the significance of Weinberg's conduct and, for the reasons discussed below, I conclude that he has not met the standard for admission to the Maine bar.

A. Bad Decisions

1. Sexual Misconduct

Weinberg graduated from the Massachusetts Institute of Technology in 1976, graduated from the New York College of Osteopathic Medicine in 1986, and obtained his medical license in 1988. Between 1992 and 1995, while he was a licensed physician in Massachusetts, Weinberg carried on a personal and sexual relationship with a patient. *Weinberg v. Bd. of Registration in Med.*, 824 N.E.2d 38, 41 (Mass. 2005). The patient, an adult, suffered from psychiatric problems that occasionally resulted in her hospitalization. *Id.* at 40.

Weinberg's actions in maintaining a sexual relationship with a patient while treating her and prescribing psychotropic medications for her is an episode of serious misconduct. I recognize that this misconduct occurred nearly twenty years ago, and that there is no evidence that Weinberg engaged in other misconduct involving sex with patients or clients before or after this incident. Reflecting on this misconduct, Weinberg was generally contrite and regretful, although his contrition was, at times, flavored with more than a touch of perceived persecution. I note that Weinberg has been in therapy almost continuously since his misconduct,

in an attempt to learn to manage his behavior and to deal with his own psychiatric illnesses. If Weinberg's actions in the years after this ethical breach had been without blemish, this event, alone, would not preclude me from granting Weinberg's admission.

2. Inappropriate Litigation Tactics

The patient filed a civil suit against Weinberg in 1996, which he settled. *Weinberg*, 824 N.E.2d at 41. When it became aware of the suit, the Massachusetts Board of Registration in Medicine subpoenaed the patient in June of 1999 to testify as part of its administrative investigation of Weinberg. *Id.* Then, Weinberg, acting through counsel, sued the patient, alleging that her participation in the Board's proceedings breached their settlement agreement. *Id.*; *Weinberg v Colon*, 1999 Mass. Super. LEXIS 519, at *3 (Dec. 3, 1999). The Massachusetts trial court dismissed Weinberg's suit pursuant to the Commonwealth's anti-SLAPP statute, holding that "it could arguably be concluded that the purpose of Weinberg's action was not to win it, but to intimidate [the patient] into refusing to appear and testify before the Board." *Id.* at *12. Weinberg maintains that the decision to sue the patient was one made by his attorney, and that he had no role in the decision that led to that suit. Although an attorney's misdeeds may be charged to his client, I will not assign this behavior much weight in determining Weinberg's character. I

do note, however, that Weinberg's own litigation tactics, discussed below, mirror the tactics of this lawyer to a worrisome degree.

After his suit against the patient was dismissed, Weinberg, himself, sent a letter to members of the Board of Registration in Medicine threatening them with criminal prosecution for conspiracy to commit perjury if they permitted the patient to testify. *Weinberg*, 824 N.E.2d at 42. In part due to Weinberg's attempts to obstruct its investigation, the Massachusetts Board of Registration in Medicine revoked his medical license in 2002. *Id.* at 42. Although he has been eligible to reapply for licensure as a physician since 2005, he has not done so.

At the time he sent this threatening letter, Weinberg had already begun his decade-long study of law at several Massachusetts law schools. He explained at the hearing in March of 2012 that, when he sent the letter, he was crazed with anxiety over the potential loss of his livelihood and his license, felt betrayed by his lawyer, and believed that the patient would fail to acknowledge that, when they *began* their sexual relationship, he had already "terminated" his professional relationship with her.³ Weinberg did send the threatening letter to the Board of Registration in Medicine over a decade ago and has accepted responsibility for its

³ Weinberg does not deny that his behavior, providing treatment to the patient while he continued to be involved romantically or sexually with her, was inappropriate. He perseverates, however, on an issue that is not directly relevant. Specifically, he fixates on the fact that, before he began his sexual relationship with her, he had "ended" their patient-physician relationship, by agreement, through a meeting with her therapist. This does not, in any way, affect the fact that, while involved in a sexual relationship with this woman *after* the therapeutic meeting, he resumed providing her with medical treatment, including the prescription of psychotropic medications.

odious nature. He has also expressed regret and remorse concerning the letter.⁴ Again, had this episode not been part of a pattern of inappropriate behavior, it, alone, would not bar his admission.

3. Deception

In 2000, while the Massachusetts Board of Registration in Medicine was investigating his conduct, Weinberg applied for a position as a physician at a hospital in New York. On his application, Weinberg falsely indicated that there were no pending disciplinary actions against him in any other state. This action led to the revocation of Weinberg's license to practice medicine in New York. Weinberg admits that his misrepresentation was intentional⁵ and credibly states that he regrets the conduct. He cites the incident as one of the gravest mistakes he has ever made. This clear breach of ethical standards reflects poorly on his character at the time. Given the years that have passed, the timing of the events, and Weinberg's acceptance of responsibility and expressions of remorse, however, these actions, alone, would not create a barrier to his bar application.

⁴ Weinberg's letter to the Board of Registration in Medicine will be discussed again below.

⁵ The Board uncovered several discrepancies within Weinberg's sixty-four-page-long application for admission to the Maine bar. Responding to the questions on the application required Weinberg to, appropriately, detail information spanning decades about his employment, whereabouts, and involvement in litigation. At the Board's request, Weinberg submitted an updated application with additional information. I do not find that the errors uncovered in the application were an attempt to conceal the existence of any incident in his past; rather, they reflect his organizational deficiencies.

B. Disorganization and Lack of Focus

Weinberg has long suffered from a variety of disorders, including major depression, attention deficit problems, and mood disorders.⁶ He has actively engaged in mental health treatment, including, but not limited to, medication regimens, since at least 1997. He appears engaged in therapy, aware of the effect mental illness has on his daily life, and compliant with his medication. I conclude that based on his long history of positive interactions with qualified treatment providers and a May 2011 medical record that indicates that he “is doing quite well psychiatrically,” it is not his psychiatric disorders that make him unfit to practice law.⁷

Weinberg submitted a variety of letters from attorneys, physicians, and others supporting his admission to the bar or attesting to his character in general. The recommenders include former colleagues, treatment providers, and professors from Weinberg’s legal studies. Several specifically mentioned Weinberg’s past misconduct before concluding that he has rehabilitated and recommending him for admission to the bar. Since his exclusion from the practice of medicine, Weinberg has worked as a scientific researcher and tutor. He also attended law school.

⁶ Although Weinberg claimed in his petition that the Board discriminated against him because of his disabilities, he has withdrawn that accusation.

⁷ As a result, I conclude that conditional admission is not appropriate because the attributes of Weinberg’s personality that bar his admission, including his belligerence and aggressive litigation tactics, do not lend themselves to monitoring through the conditional admission process.

There is no evidence of misconduct in his academic work or his employment as a non-physician.

Notwithstanding his positive medical reports, his academic success in law school, his passing of the bar, and the positive references, Weinberg's executive functioning deficits were apparent in his conduct during this litigation. During the hearing on this matter, Weinberg demonstrated a lack of organization and an inability to accept direction that do not bode well for a successful law practice. His written submissions to the Court have similar deficits. The work product of many attorneys, however, contains similar defects, and the issue before me is not Weinberg's competence as a drafter of pleadings or even as a litigator.

C. Pattern of Anger and Belligerence in Litigation⁸

In addition to the civil and administrative actions related to his misconduct and the loss of his medical license, Weinberg has been a party to a number of civil cases in the past fifteen years. The record reveals three debt collection actions, a foreclosure proceeding, an eviction action, a complaint for a restraining order in which Weinberg is the defendant, and a suit Weinberg filed against his medical

⁸ Weinberg has also faced criminal charges resulting from two incidents in 2007. First, Weinberg was charged with assault with a dangerous weapon and two counts of assault and battery stemming from an altercation with his landlord. Weinberg was found not guilty after a 2008 jury trial.

Second, Weinberg was charged with assault after an incident with his wife. Weinberg and his wife both testified that Weinberg was arrested after he unintentionally struck her in the face while gesturing during a very early morning argument. Weinberg was found not guilty in this case following a non-jury trial.

Because he was acquitted of all charges, I have not considered these cases in reaching my decision.

malpractice insurance company. Weinberg also filed for bankruptcy in 2005 and was granted a discharge in 2007. The debt collection actions and Weinberg's suit against his insurance company resulted in voluntary dismissals. Judgment was entered against Weinberg in the eviction action and the complaint for a restraining order. The foreclosure is still pending.

The Board has asserted that Weinberg's involvement in these actions demonstrates that he is overly litigious. Weinberg, who has more frequently been a defendant in civil cases than a plaintiff, argues that it is unfair to characterize him as litigious when he has only responded to suits brought against him. It is his *actions* as a defendant during litigation, however, not his status as a plaintiff or defendant, that give support to the Board's charge of litigiousness.⁹

Properly characterizing Weinberg's behavior as a party to civil suits and administrative proceedings is essential to determining the effect that his behavior should have on his admission. As described above, Weinberg has been both a complaining party and a defending party in numerous suits. The actions he brought all stemmed—directly or indirectly—from his sexual misconduct and its catastrophic effect on his career as a physician. First, his unjustifiable and misguided suit against his former patient was intended to preserve his license as a physician. Next, his civil case against his malpractice insurance carrier was related

⁹ I also recognize that the loss of Weinberg's medical license dramatically affected his earning capacity, which helps explain the debt collection actions, the foreclosure, and his bankruptcy.

to his efforts to protect his professional license. Finally, the bankruptcy proceeding was caused, at least in part, by Weinberg's loss of his medical license and his divorce from his first wife. With the exception of the action against his former patient, there is no evidence in the record that his actions in these suits demonstrated belligerence or undue aggression.

It is his actions in handling the proceeding before the Board of Registration in Medicine, the eviction proceedings, and the instant action, in which he seeks to obtain the right to practice law in Maine, that highlight the most troubling aspect of Weinberg's character, specifically his belligerence and single-minded aggression.

Weinberg's early 2000 letter to the Board of Registration in Medicine was not only inappropriate and misguided; it also demonstrated a willingness to take almost any action to maintain his license. I appreciate that Weinberg perceived that he was fighting for his life, and note that his actions may have resulted in a longer period of suspension than he otherwise would have received. I understand that he wrote the letter many years ago, that he had not yet begun to study law, and that the behavior demonstrated by his own lawyer was less than appropriate. For all of these reasons, this action, alone, would not prevent Weinberg from practicing law in Maine.

In 2007 and 2008, while defending the eviction action, Weinberg served 120 interrogatories upon the plaintiff despite the 30-interrogatory limit imposed by the

applicable rule of procedure. I note that there are few civil matters more personally threatening, save family law cases, than eviction actions. In addition, Weinberg faced eviction because he withheld rent based on his belief that his landlord had misled him about the lead content in his apartment, which threatened the health of his young child.¹⁰ That landlord had also very recently made claims that had resulted in serious criminal charges being brought against Weinberg. Given this context, Weinberg's actions in this single case, alone, would not prevent me from granting his admission to the bar.

It is Weinberg's actions over the past eighteen months in handling his petition to be admitted to the Maine bar that have, ironically, created the biggest impediment to his admission. Weinberg's recent actions demonstrate that he has not yet learned to temper his sense of injury or outrage when dealing with litigation, and that his demonstrated willingness to go on the "attack" when he believes he has been, or is about to be, wronged is unabated.

In this case, Weinberg sent an intemperate email to the Board following its hearing. In it, he accused the Board and its counsel of intentionally discriminating against him because of his disabilities, violating his civil rights, and accepting false testimony. He repeated these allegations in his petition to this Court. Weinberg abandoned those arguments during the hearing and admitted that his email was a

¹⁰ He presented documentary evidence at the hearing suggesting that his belief was correct.

mistake. He asserts that his actions occurred because he has been representing himself in a highly charged, contentious case. He claims that his judgment as an attorney would be better because he would be able to effectively separate his client's interests from his own.

I cannot accept these representations. In an action specifically tailored to allow him to demonstrate his good character and fitness to practice law, Weinberg has continued his “scorched earth” method of litigation.¹¹ I recognize that, although they require the complete cooperation and candor of the applicant, professional licensing proceedings are adversarial. In this context, Weinberg has the right to assert any claim or defense with a non-frivolous basis in law and fact. *See* M.R. Prof. Conduct 3.1. Moreover, disability discrimination in the bar application process has been successfully argued in the past. *See In re Underwood*, BAR-93-21, 1993 Me. LEXIS 267 (Dec. 8, 1993) (Clifford, J.).

Nevertheless, Weinberg's decision to claim that Assistant Attorney General William Fisher had “sent out a misleading and deceptive letter,” which “epitomize[d] a pattern of deceptive, defamatory and misleading statements,” and his decision to claim that members of the Board had denied his petition because they held some discriminatory animus toward him—both claims made without any

¹¹ His skewed focus, his rambling and repetitive presentations and filings, and his reluctance to be redirected are also concerning, but those failings and flaws have not been assigned significant weight in reaching this decision.

basis except his own “perceptions”—show a breathtaking lack of good legal judgment. Not only was Weinberg not able to demonstrate any discrimination by the Board in his case, he was forced to withdraw those allegations during the March hearing, admitting that the only “evidence” of discrimination that he had was the Board’s “failure” to address or discuss his psychiatric diagnoses in its decision. As for his complaints about AAG Fisher, the record demonstrates that the only individual with a penchant for a “pattern of deceptive, defamatory and misleading statements” in these proceedings was Weinberg himself.

The question is whether Weinberg’s recent actions, when viewed in light of his past behavior, show that he possesses a serious character flaw, rendering him unfit to practice law or whether his actions, “however offensive, [represent] a temporary siege mentality, and the uncomely hubristic aspect of his personality.” *In re Application for Admission to the Bar*, 828 N.E.2d 484, 489 (Mass. 2005) (quotation marks omitted). One of the exhibits admitted into evidence was an affidavit Weinberg filed with the Board of Registration in Medicine, dated October 2, 2002, in an attempt to “help explain [his] conduct over the past four months, and to withdraw the papers [he] recently submitted.” In that affidavit Weinberg stated:

Knowing that the Objections to be filed on September 4, 2002 were my last chance to preserve my legal rights in the [event] of an appeal, I went overboard and prepared a 179-page document to list and detail every possible innuendo of my case for possible appeal and to preserve my legal rights.

I felt grossly inadequate in trying to understand all the law involved, in a very unfamiliar terrain, and at times I believed I must throw everything including the kitchen sink into the objections or face some serious waiver of a legal right.

The kitchen-sink approach appears to be Weinberg's regular legal strategy. The use of this strategy unfortunately is not limited to Weinberg and a single example, without more, would not demonstrate an individual's lack of fitness to practice law. When his actions before the Board and this court are viewed in light of his history recounted above, however, it is not possible to conclude that Weinberg's conduct does not demonstrate a serious character flaw that renders him unfit to practice law.

After careful consideration, and thoughtful reflection, I must conclude that Weinberg's actions are so extreme as to bar his admission to the practice of law. It is not just that Weinberg's aggressive tactics are offensive, as "[c]onduct that is merely socially unacceptable is not relevant to character and fitness for law practice and should not be considered." ABA Code at ix. What stands out is that Weinberg is willing, when the stakes are high, to say or do almost anything to get the result he wants, even if that involves bullying a witness, or attempting to bully an adversary or even an adjudicatory body.

Weinberg requests that I admit him conditionally pursuant to M. Bar Admission R. 9A. I cannot agree that a conditional admission is appropriate because there is no evidence in the record that Weinberg is so close to being ready

for admission that, with supervision and guidance of the Maine Assistance Program for Lawyers and Judges, he could prove to be a worthy addition to the bar of Maine.

Weinberg does not meet the criteria for admission. The record shows that Weinberg has a history of acts and omissions that demonstrate a lack of character and fitness to practice law. Although it is unlikely that he will repeat the sexual misconduct, his continuing pattern of litigiousness, aggression, and willingness to misrepresent the truth demonstrates that he does not have sufficient good character and fitness to practice law.

The entry is:

The petition of Robert P. Weinberg for certification of his character and fitness to practice law is DENIED.

Dated: 7 May 2012

/s/
Ellen A. Gorman, Associate Justice
Maine Supreme Judicial Court