THE COMMONWEALTH OF MASSACHUSETTS

Middlesex, ss. **Division of Administrative Law Appeals**

Board of Registration in Medicine,
Petitioner

v. Docket No. RM-19-0067

Kang Lu, M.D.,
Respondent

Appearance for Petitioner:

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Administrative Magistrate:

Edward B. McGrath, Esq.
Chief Administrative Magistrate

SUMMARY OF RECOMMENDED DECISION

The Petitioner has proved by a preponderance of the evidence that the Respondent is an immediate and serious threat to the public health, safety, or welfare and I, therefore, recommend that the Board affirm the Order of Temporary Suspension pertaining to the Respondent. In addition, I find that the Respondent made false representations in his 2017 and 2019 requests to renew his medical license, was convicted of a crime in 2018, committed an offense against provisions of the laws of the Commonwealth relating to the practice of medicine and regulations adopted thereunder, and lacks good moral character and engaged in conduct that undermines the public confidence in the integrity of the medical profession. Therefore, I further recommend that the Board of Registration in Medicine impose the discipline it believes is appropriate as to the Statement of Allegations.

RECOMMENDED DECISION

On February 7, 2019, the Petitioner, the Board of Registration in Medicine ("Board"), pursuant to G.L. c. 112, § 5 eighth par. (b), and 243 CMR §§ 1.03(5)(a)(1), (2), (7), and (11), issued an Order of Temporary Suspension, a Statement of Allegations, and an Order of Reference to the Division of Administrative Law Appeals ("DALA") regarding the Respondent, Dr. Kang Lu. The Order of Temporary Suspension suspended Dr. Lu's certificate of registration to practice medicine on the grounds that the health, safety, and welfare of the public necessitated the suspension. The Statement of Allegations ordered the Respondent to show cause why he should not be disciplined for committing an offense against any provision of the laws of the Commonwealth relating to the practice of medicine, or any rule or regulation adopted thereunder, for fraudulently procuring the renewal of his certificate of registration, for the conviction of a crime, and for lacking good moral character and engaging in conduct that undermines the public confidence in the integrity of the medical profession.

I held a pre-hearing tele-conference on February 21, 2019. The parties agreed to continue the hearing on the summary suspension until March 25, 2019 and conduct the hearing on the Statement of Allegations at the same time.

I conducted an evidentiary hearing on March 25, 2019 at the Civil Service Commission, One Ashburton Place, Boston, Massachusetts. At the hearing, the Board produced three witnesses: Sergeant Dan Lamoreaux of the Auburn Police Department, the Board's investigator Robert Bouton, and Respondent, Dr. Kang Lu. Dr. Lu also testified on his own behalf. The hearing was stenographically recorded and I refer to the transcript in this decision as "Tr. page." At the hearing, I marked twenty-six exhibits (Ex. 1-26). I closed the record on May 3, 2019 after the parties filed their closing briefs.

FINDINGS OF FACT

Based upon the evidence presented, the reasonable inferences from it, and my assessment of the witnesses' credibility, I make the following findings of fact:

1. Dr. Kang Lu was born in 1977. He graduated from Boston University School of Medicine in 2005 and is certified in Diagnostic Radiology by the American Board of Radiology. He has been licensed to practice medicine in Massachusetts under certificate number 250034 since 2012. His license to practice medicine is set to expire in January, 2021. (Petitioner Ex. 20.)

2. In a letter dated June 24, 2003, the Brookline Police Department ("BPD") revoked Dr. Lu's license to carry firearms. The BPD took custody of Dr. Lu's firearms the same day. The letter also stated: **"Please be advised that it is now unlawful for you to possess any weapons."** (emphasis in original) (Petitioner Ex. 14.)

3. Dr. Lu completed his residency at the Madigan Army Medical Center in Washington, and subsequently worked in Missouri, Georgia, Iraq, Virginia, and North Carolina at military-affiliated hospitals. Dr. Lu returned to Massachusetts in 2014 and has resided in various locations in Massachusetts and New Hampshire. (Respondent Test. Tr. 87, 92-95.)

4. On April 26, 2012, Dr. Lu filed articles of incorporation for Minutemen Radiology, Inc. in Florida. Both Dr. Lu's address and the principal place of business were listed in St. Robert, Missouri. (Petitioner Ex. 7; Respondent Test. Tr. 126.)

5. On September 11, 2014, Dr. Lu was stopped by the Massachusetts State Police ("MSP") after the MSP received a report that the vehicle with New Hampshire license plates operated by Dr. Lu was driving erratically. After effectuating a motor vehicle stop, the MSP Trooper observed Dr. Lu's child passenger was not in a proper booster seat. Dr. Lu initially

refused to provide his license and registration and to identify himself to the MSP Trooper. Eventually, Dr. Lu presented a Massachusetts license. When Dr. Lu got out of the vehicle, the MSP Trooper found a knife on Dr. Lu's hip. Dr. Lu was placed under arrest, and was uncooperative throughout the booking process. (Petitioner Ex. 10; Bouton Test. Tr. 57-60.)

6. On September 12, 2014, Dr. Lu was arraigned in Westfield District Court on four counts: 1) Carrying a Dangerous Weapon pursuant to M.G.L. c. 269, § 10(b); 2) Marked Lanes Violation pursuant to M.G.L. c. 89, § 4; 3) Refusing to Identify Self pursuant to M.G.L. c. 90, § 25; and 4) Operating a Motor Vehicle with a Child Under 5 Without a Car Seat pursuant to M.G.L. c. 90, § 7AA. (Petitioner Ex. 10; Bouton Test. Tr. 59-60.)

7. On December 2, 2014, Dr. Lu submitted his 2015 License Renewal Application ("LRA") with the Board of Registration in Medicine ("Board"). Question 17 on the LRA asked the following four questions regarding criminal charges:

a) Have you been charged with any criminal offense during this period?
b) Have any criminal offenses/charges against you been resolved during this time period?
c) Are there any criminal charges pending against you today?
d) Are any Application of Issuance of Process pending against you?

Dr. Lu answered "Yes" to question 17a. Dr. Lu submitted the supplemental materials required by the Board for an affirmative answer to question 17. (Petitioner Ex. 10; Bouton Test. Tr. 56-57.)

8. The LRA is signed under the penalties of perjury and requires the applicant to certify that he has examined the application and accompanying instructions and that "information contained herein is true, accurate, and complete." (Petitioner Ex. 10.)

9. The Board's "Full License Renewal Instructions" provide the following instructions for question 17:

> Being "charged with any criminal offense" includes being arrested, arraigned or indicted, even if the charges against you were subsequently dropped, dismissed, expunged or otherwise discharged.
>
> You must report resolutions of any criminal offenses/charges including convictions for felonies and/or misdemeanors, pleas of "no contest" or nolo contendere, matters that were continued without a finding; matters for which you were placed on pretrial probation; and/or any other dispositions based on a finding of guilty or an admission to sufficient facts for a finding of guilty.
>
> . . .
>
> If you answered "yes" to question 17, please complete Form R and attach a copy of the police report, indictment or complaint and an up-to-date court docket sheet.

(Petitioner Ex. 19.)

10. On December 8, 2014, the criminal matters were resolved. The Commonwealth filed a *nolle prosequi* relative to Count 1, Carrying a Dangerous Weapon on September 23, 2014. Count 3, Failure to Identify Self, was decriminalized to a civil infraction. (Petitioner Ex. 10; Bouton Test. Tr. 59.)

11. Dr. Lu's 2015 LRA was approved. (Bouton Test. Tr. 67.)

12. On April 12, 2015, Dr. Lu was stopped by a Palmer Police Department officer for failing to use a turn signal. Dr. Lu was driving a vehicle with Florida license plates. Dr. Lu initially refused to identify himself to the officer and refused to provide his license and registration. Dr. Lu would not comply with the officer's request and was forcefully removed from the vehicle and placed under arrest. The officer noted a large knife sheath on his hip. Dr. Lu presented a New Hampshire driver's license to the officer. (Petitioner Ex. 11; Bouton Test. Tr. 62-63.)

13. On April 13, 2015, Dr. Lu was arraigned in Palmer District Court on five counts: 1) Failure to Signal pursuant to M.G.L. c. 90, § 14B; 2) Refusing to Identify Self pursuant to M.G.L. c. 90, § 25; 3) Resisting Arrest pursuant to M.G.L. c. 268, § 32B; 4) Carrying a

Dangerous Weapon pursuant to M.G.L. c. 269, § 10(b); and 5) Disorderly Conduct pursuant to M.G.L. c. 272, § 53. (Petitioner Ex. 11; Bouton Test. Tr. 62-63.)

14. The matter was resolved on May 12, 2015. The Court decriminalized Count 2, Failure to Identify Self, and found Dr. Lu responsible and imposed a civil fine of $100. The Commonwealth dismissed Counts 1, 3, 4, and 5. (Petitioner Ex. 11; Bouton Test. Tr. 64-65.)

15. On May 3, 2016, Dr. Lu was issued a Pistol/Revolver License in New Hampshire that expires in 2021. Dr. Lu provided a Spofford, New Hampshire address when he applied for the license. (Respondent Ex. 2.)

16. On December 3, 2016, Dr. Lu submitted his 2017 LRA to the Board. He answered "No" to all four parts of question 17. He did not disclose the April 12, 2015 arrest or April 13, 2015 arraignment. (Petitioner Ex. 12; Bouton Test. Tr. 66.)

17. Dr. Lu's 2017 LRA was approved. (Bouton Test. Tr. 67.)

18. On February 1, 2018, Dr. Lu filed an annual report for Minutemen Radiology, Inc., with the Florida Secretary of State. Both Dr. Lu's address and the principal place of business were listed in Crestview, Florida. (Petitioner Ex. 8; Bouton Test. Tr. 54.)

19. On October 13, 2018, Dr. Lu was arrested by an officer of the Canada Border Services Agency ("CBSA") at the St-Armand Border Crossing as he tried to enter Canada. During the primary inspection, Dr. Lu denied having weapons in the vehicle. Under the window of the officer's booth was a sign stating "Attention, declare all weapons to a Canada border service agency officer." Dr. Lu gave an ambiguous response to the question "And what is the purpose of your trip to Canada?" Dr. Lu, in subsequent questioning, revealed his aim was to go to the Holiday Inn the following day and spend the night in downtown Montreal. (Petitioner Ex. 15.)

20. The CBSA officer decided to send Dr. Lu to a secondary inspection. During the secondary inspection, two CBSA officers asked Dr. Lu to step out of his vehicle and saw he had a six-inch knife at his belt. Dr. Lu informed them he had one handgun between the front two seats of his vehicle. It was loaded. The officers found two additional handguns and three ammunition storage magazines in a suitcase under the carpet of the trunk of his vehicle. (Petitioner Ex. 15.)

21. At a November 2, 2018 hearing before the Court of Quebec, Dr. Lu pleaded guilty to importing "three restricted firearms, namely three handguns and three prohibited devices that are ammunition storage magazines." Dr. Lu had been in custody since his October 13, 2018 arrest and was sentenced to one day of jail. At the hearing, Dr. Lu and his attorney stated that an absolute discharge of the charges was necessary because Dr. Lu has to declare if "he had pleaded guilty for a criminal offence when he renews his physician license." (Petitioner Ex. 15.)

22. On December 31, 2018, Dr. Lu submitted his 2019 LRA to the Board. He answered "No" to all four parts of question 17. He did not disclose the October 13, 2018 arrest or his November 2, 2018 guilty plea. (Petitioner Ex. 16; Bouton Test. Tr. 70-71.)

23. Dr. Lu's 2019 LRA was approved. (Petitioner Ex. 20.)

24. On January 27, 2019, Dr. Lu was stopped by Sergeant Daniel Lamoreaux of the Auburn Police Department for a motor vehicle infraction while driving a Toyota sedan with a Florida registration. The car was registered to Minuteman Radiology from Crestview, Florida. Dr. Lu had a female passenger in the vehicle at the time of the stop. (Petitioner Ex. 1; Lamoreaux Test. Tr. 17-21.)

25. After speaking with the female passenger, Sergeant Lamoreaux handcuffed her and placed her in the rear of the police cruiser.[1] He then requested Dr. Lu exit the vehicle. Sergeant Lamoreaux observed a 6-inch sheath and knife on Dr. Lu's hip. Dr. Lu was also carrying a Glock handgun in his waistband and a handgun magazine in his left pant pocket. The handgun was loaded with a magazine of fifteen 9mm bullets. Dr. Lu was placed under arrest. (Petitioner Exs. 1, 4; Lamoreaux Test. Tr. 23-26.)

26. On January 28, 2019, Dr. Lu was arraigned in Worcester District Court on four counts: 1) Possession of a Large Capacity Firearm pursuant to M.G.L. c. 269, § 10(m); 2) Carrying a Firearm Without a License pursuant to M.G.L. c. 269, § 10(a); 3) Possession of Ammunition without Firearms Identification Card pursuant to M.G.L. c. 269, § 10(h)(1); and 4) Sexual Conduct for a Fee pursuant to M.G.L. c. 272, § 53A. (Petitioner Ex. 2; Bouton Test. Tr. 39.)

27. On January 28, 2019, the Commonwealth moved for a dangerousness hearing regarding Dr. Lu pursuant to M.G.L. c. 276, § 58A. (Petitioner Ex. 2; Bouton Test. Tr. 39.)

28. On January 29, 2019, the Board assigned Robert Bouton, an investigator for the Board's Enforcement Division, to investigate Dr. Lu after it received information Dr. Lu had been arrested and criminally charged by the Auburn Police Department. (Petitioner Ex. 20; Bouton Test. Tr. 37.)

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[1] Sergeant Lamoreaux testified credibly concerning the conversation he had with the female passenger and what the female passenger told him is related in some of the exhibits. I find that the statements made to the Sergeant by the female passenger are unreliable hearsay and I give them no weight. A person being questioned by police and eventually arrested may have many reasons to provide information, truthful or otherwise, to the officer. Under the circumstances these statements were made, I find them unreliable. *See Edward E. v. Dep't of Soc. Servs.*, 42 Mass. App. Ct. 478, 484 (1997).

29. On January 30, 2019, the Board notified Dr. Lu that it was investigating him. (Bouton Test. Tr. 75.)

30. On January 31, 2019, the Worcester District Court ordered Dr. Lu to pretrial detention, finding that "no conditions of release imposed upon the defendant will reasonably assure the safety of ... the community." The District Court judge made the following findings of fact:

> [Dr. Lu was] [e]vasive about residence and ties to multiples addresses including FL & NH.
> Defendant admits during booking video that he will possess [and] carry guns again upon release. Defendant armed with loaded large-capacity Glock 9mm semi-automatic handgun [and] two loaded magazine [and] boxes of [ammunition].
> [Defendant] has demonstrated [a] pattern of being armed when interacting with law enforcement including guns & knives.

(Petitioner Ex. 5; Bouton Test. Tr. 42.)

31. On February 4, 2019, Investigator Bouton spoke with Dr. Lu via telephone. Dr. Lu confirmed that he had received a Voluntary Agreement Not to Practice Medicine ("VANP"). Dr. Lu told Mr. Bouton that he would not enter into the VANP. (Petitioner Ex. 20; Bouton Test. Tr. 76.)

32. On February 11, 2019, the Worcester Superior Court reviewed Dr. Lu's Bail Petition and ordered him to be released on $5,000 cash bail with the following conditions:

> Home confinement at the home of Vincent Gillespie, 72 Green Street, Athol MA with GPS monitoring;
> Report to Probation Department weekly by telephone;
> He will not possess weapons and surrender any weapons;
> Refrain from excessive use of alcohol or any use of narcotic drug without a prescription from a licensed medical provider;
> Shall not leave the Commonwealth of Massachusetts without permission;
> Sign a waiver of rendition; and
> Comply with any determination of the Board of Registration in Medicine.

(Petitioner Ex. 18.)

ANALYSIS

The Board of Registration in Medicine ("Board") has a legislative mandate to investigate and, when appropriate, discipline doctors. *See* G.L. c. 112, § 5. Specifically, the Legislature provided:

> The board may, after a hearing pursuant to chapter thirty A, revoke, suspend, or cancel the certificate of registration, or reprimand, censure ... [a physician] upon proof satisfactory to a majority of the board that said physician:
> ....
> (b) is guilty of an offense against any provision of the laws of the commonwealth relating to the practice of medicine, or any rule or regulation adopted thereunder
> ...

Id.

To carry out its Legislative mandate, the Board adopted further regulations. One provision of those regulations provides:

> (5) Grounds of Complaint.
> (a) Specific Grounds for Complaints Against Physicians. A complaint against a physician must allege that a licensee is practicing medicine in violation of law, regulations, or good and accepted medical practice and may be founded on any of the following:
> 1. Fraudulent procurement of his or her certificate of registration or its renewal;
> 2. Commitment of an offense against any provision of the laws of the Commonwealth relating to the practice of medicine, or any rule or regulation adopted thereunder;
> ....
> 7. Conviction of any crime;
> ....
> 11. Violation of any rule or regulation of the Board;
> ....

243 CMR 1.03(5).

The Board may also discipline a physician who lacks good moral character and engages in conduct that undermines the public confidence in the integrity of the medical profession. *See Raymond v. Board of Registration in Medicine*, 387 Mass. 708, 713 (1982); *Levy v. Board of Registration in Medicine*, 378 Mass. 519, 527-28 (1979).

The regulations also provide that "The Board may suspend or refuse to renew a license pending a hearing on the question of revocation if the health, safety or welfare of the public necessitates such summary action." 243 CMR 1.03(11).

In its Statement of Allegations, the Board alleged that Dr. Lu was convicted of a crime; fraudulently procured the renewal of his certificate of registration; committed an offense against provisions of the laws of the Commonwealth relating to the practice of medicine, or any rule or regulation adopted thereunder, and violated a regulation of the Board, to wit, 243 CMR 1.03(5)(a)(1) (fraudulent procurement of certificate of registration or its renewal) and 243 CMR 1.03(5)(a)(7) (conviction of any crime); and lacks good moral character and engaged in conduct which undermines the public confidence in the integrity of the medical profession.

The Board has the burden of establishing the allegations set forth in the Statement of Allegations and supporting the Order of Temporary Suspension by a preponderance of the evidence. *See Randall v. Board of Registration in Medicine*, SJ-2014-0475, Memorandum of Decision (Cordy, J., June 9, 2015) (due process requires preponderance of evidence for summary suspension); *Craven v. State Ethics Commission*, 390 Mass. 191, 200 (1983) (preponderance of evidence is generally standard at administrative proceedings). A fact is proved by a preponderance of the evidence if the tribunal has "a firm and abiding conviction in the truth of" the proposition advanced by the Board. *Stepakoff v. Kantar*, 393 Mass. 836, 843 (1985). After a careful review of all of the evidence in this case, I have concluded that the Board has met its burden of proof with respect to the allegations that Dr. Lu was convicted of a crime, fraudulently renewed his certificate of registration, committed an offense against provisions of the laws of the Commonwealth relating to the practice of medicine, or any rule or regulation adopted thereunder

and violated a regulation of the Board, and lacks good moral character and engaged in conduct that undermines the public confidence in the integrity of the medical profession.

The Board has proved by a preponderance of the evidence that Dr. Lu was convicted of a crime. This proof was supplied by Dr. Lu's guilty plea before the Court of Quebec[2] on November 2, 2018 following his October 13, 2018 arrest. *See Kobrin v. Board of Registration in Medicine*, 444 Mass. 837, 846-47 (2005). The Board may, therefore, discipline Dr. Lu pursuant to 243 CMR 1.03(5)(a)(7).

The Board may discipline a physician who fraudulently renews his certificate of registration. *See* 243 CMR 1.03(5)(a)(1). In Massachusetts, a physician must renew his certificate of registration every two years. *See* G.L. c. 112, § 2. "[F]raudulent intent may be shown by proof that a party knowingly made a false statement and that the subject of that statement was susceptible of actual knowledge. No further proof of actual intent to deceive is required." *Fisch v. Board of Registration in Medicine*, 437 Mass. 128, 139 (2002). The Board has proved by a preponderance of the evidence that Dr. Lu fraudulently procured the renewal of his certificate of registration to practice medicine in Massachusetts when he submitted his 2017 and 2019 License Renewal Applications ("LRA").

In its renewal instructions, the Board defines being "charged with any criminal offense" to include being arrested or arraigned, even if the charges were subsequently "dropped, dismissed, expunged, or otherwise discharged." Dr. Lu's 2015 LRA to the Board correctly contained an affirmative answer to question 17a regarding criminal charges against him. However, Dr. Lu answered "No" to the same questions on his 2017 and 2019 LRAs. Dr. Lu's negative response to question 17 on the 2017 LRA is false because he was arraigned on five

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2 *Canada Border Services Agency v. Lu*, 2018 QCCQ 8534 (Can.)

counts in the Palmer District Court on April 13, 2015 following his arrest on April 12, 2015 by the Palmer Police Department. The 2019 LRA negative response to question 17 is false because he was arrested by the Canadian Border Services Agency and pleaded guilty to importing "three restricted firearms, namely three handguns and three prohibited devices that are ammunition storage magazines" in the Court of Quebec at a November 2, 2018 hearing following his October 13, 2018 arrest.

Dr. Lu offered no credible evidence to refute the Board's allegations. Rather, Dr. Lu offered irrelevant exhibits and memoranda of law that neither supported his defenses nor discredit the Board's allegations. In fact, his testimony, in large part, confirmed and corroborated the Board's evidence. Dr. Lu unpersuasively parsed words to justify behavior he knows would subject him to sanctions by the Board. Regarding his 2014 arrest in Westfield, he testified that he was in an automobile, not a motor vehicle, and therefore not subject to transportation statutes because he was traveling and not driving; that he was not arrested despite being handcuffed and booked at the police station; and that he saw an administrative officer and not a judge at the Westfield District Court.

Dr. Lu's argument is similarly an exercise in semantics based upon a fragmentized reading and misapplication of various legal authorities. The core of his argument consists of collateral attacks questioning the validity of his arrests. Dr. Lu may not use the adjudicatory process to collaterally attack the validity of his criminal conviction or re-litigate an issue that has been decided by the court. *See Kobrin*, 444 Mass. at 847; *see also Lu v. Spencer*, Civil Case No. 15-30162-MGM, 2016 WL 740407 (D. Mass. Feb. 24, 2016) ("As [Dr. Lu's] reliance on *Shapiro* was misplaced and his bedrock assertion is without merit, the court will grant Defendants' motion to dismiss"), *aff'd* No. 16-1381, 2017 WL 4574438 (1st Cir. March 7, 2017). Therefore,

Dr. Lu fraudulently procured his 2017 and 2019 renewal of his certificate of registration and is subject to discipline by the Board pursuant to 243 CMR 1.03(5)(a)(1). *See Fisch*, 437 Mass. at 139.

The Board has proved by a preponderance of the evidence that Dr. Lu violated a rule or regulation of the board. The Board independently proved that Dr. Lu violated 243 CMR 1.03(5)(a)(1) when he submitted his 2017 and 2019 LRAs and 243 CMR 1.03(5)(a)(7) when he pleaded guilty before the Court of Quebec. Therefore, the Board may discipline Dr. Lu pursuant to G.L. c. 112, § 5 eighth par. (b) and 243 CMR 1.03(5)(a)(11).

The Board has proved by a preponderance of the evidence that Dr. Lu lacks good moral character and engaged in conduct that undermines the public confidence in the integrity of the medical profession. *See Raymond*, 387 Mass. at 713; *Levy*, 378 Mass. at 527-28.

Good moral character includes "the elements of simple honesty, fairness, respect for the rights of others and for the laws of State and Nation." *See In the Matter of Sherwin H. Raymond, M.D.*, Board of Registration in Medicine, Adj. Case #243, 15 (Memorandum of Decision, July 29, 1981) (quoting *State ex rel. McAvoy v. Louisiana State Board of Medical Examiners*, 238 La. 502, 516 at n.2 (1959)). While Dr. Lu recognizes that the laws of the Commonwealth and the rules and regulations of the Board exist, the evidence presented evinces his intentional and self-serving election of which laws and rules apply to him, what they mean, and when they apply. The Supreme Judicial Court's statement that: "It is difficult to conceive of an attitude more antithetical to a commitment to preserve life, alleviate suffering, and restore health, than the mentality demonstrated by knowing possession of unregistered automatic submachine guns" is illustrative in this matter. *See Raymond*, 387 Mass. at 712. While Dr. Lu was not in possession of unregistered machine guns, his mentality in possessing unlicensed firearms, ignoring laws

concerning their importation into Canada and refusing to answer honestly the questions set out in the renewal applications demonstrate the same troubling mentality demonstrated by the physician in *Raymond*.

Dr. Lu's self-serving interpretation of the law, which not only disrespects the laws of the Commonwealth and the rules and regulations of the Board but also disregards them, is misguided and dangerous. Regarding his 2015 arrest in Palmer, Dr. Lu testified that the Palmer District Court "wasn't a court" and that he did not "believe [the judge] was a judge either." Respondent Test. Tr. 112-13. He justified not reporting the arrest on his 2017 LRA because the arrest "was a nullity because nobody got hurt ... I didn't have to disclose anything. There was nothing to disclose." Respondent Test. Tr. 126. The Massachusetts General Laws do not require there to be an injured party for an act to constitute a crime, and the Board application does not distinguish between violent and non-violent criminal offenses. Dr. Lu understands the requirement because he told the Court of Quebec in 2018 that he was required to "declare ... if he had pleaded guilty for a criminal offence when he renews his physician license." (Finding 21.)

Despite how emphatic Dr. Lu is about his beliefs, he cannot escape the consequences of his conduct. He was charged multiple times in Massachusetts for weapons and firearms charges and has been uncooperative with arresting authorities, and he has pleaded guilty to importing firearms into Canada. He has also stated his intent to possess and carry guns, despite his lack of a Massachusetts license to carry firearms since 2003. Dr. Lu has engaged in conduct that undermines the public confidence in the integrity of the medical profession. Therefore, the Board may discipline him pursuant to *Raymond*, 387 Mass. at 713, and *Levy*, 378 Mass at 527-28.

The Board has proved by a preponderance of the evidence that the health, safety, and welfare of the public necessitated Dr. Lu's temporary suspension. The Board has authority under 243 CMR 1.03(11)(a) to suspend a physician immediately if it determines the physician is an immediate and serious threat to the public health, safety, or welfare. The Board has consistently summarily suspended the licenses of physicians who have made false statements on Board licensure applications. *See In the Matter of Joseph A. Zadronzy, M.D.*, Board of Registration in Medicine, Adj. Case 94-30 (Memorandum of Decision, October 26, 1994); *In the Matter of Patrick J. Greene, M.D.*, Board of Registration in Medicine, Adj. Case 94-48 (Memorandum of Decision, June 29, 1994); *In the Matter of Daniel R. Bonetzky, M.D.*, Board of Registration in Medicine, Adj. Case 89-21-SU (Memorandum of Decision, November 6, 1991); *see also Forziati v. Board of Registration in Medicine*, 333 Mass. 125, 127 (1955) (honesty and integrity of a physician is directly related to public health, welfare and safety).

Dr. Lu provided false answers regarding criminal charges against him in his 2017 and 2019 LRAs to the board. Additionally, Dr. Lu has demonstrated a pattern of being armed when interacting with law enforcement and admitted his intention to continue to possess and carry guns despite lacking a license to carry a firearm in Massachusetts. (Finding 30.) Taken cumulatively, the facts presented by the Board demonstrate by a preponderance of the evidence that the health, safety, or welfare of the public necessitated the summary suspension of Dr. Lu's license.

CONCLUSION

Based on the evidence presented at the hearing, the Board has proved by a preponderance of the evidence that Dr. Lu was convicted of a crime, that he fraudulently procured the renewal of his certificate of registration, that he committed an offense against the provisions of the laws of the Commonwealth relating to the practice of medicine and regulations adopted thereunder, lacks good moral character, and engaged in conduct that undermines the public confidence in the integrity of the medical profession. Therefore, I recommend that the Board impose appropriate discipline on Dr. Lu as to the violations described in the Statement of Allegations and found here.

The Board also proved by a preponderance of the evidence that the health, safety, or welfare of the public necessitated the summary suspension of his license and, therefore, I recommend that the Board affirm the Temporary Suspension of Dr. Lu's license to practice medicine.

DIVISION OF ADMINISTRATIVE LAW APPEALS

Edward B. McGrath, Esq.
Chief Administrative Magistrate

DATED: June 13, 2019