respondent committed multiple forms of misconduct in her own divorce, including (1) filing false financial statements with the court, (2) noncompliance with court orders resulting in contempt judgments, and (3) the pursuit of a frivolous motion and appeal. In addition, as discussed *supra*, the board found a lack of mitigating factors and the existence of multiple aggravating factors.

In contrast, cases in which a lesser sanction has been imposed for similar misconduct have generally involved the presence of significant mitigating factors. See, e.g., *Matter of Ring*, 427 Mass. at 186, 188, 192-193 (imposing board-recommended three-month suspension for multiple forms of misconduct in attorney's own divorce, despite some misgivings that sanction was too lenient, where evidence was presented that respondent was clinically depressed after breakup of thirty-five year marriage); *Matter of Leahy*, 28 Mass. Att'y Discipline Rep. at 530-532, 538-539 (imposing two-month suspension for misconduct during attorney's own divorce, including contempt judgment for noncompliance with court orders and misrepresentations to court regarding wife's mental health, where misconduct was not motivated by pecuniary gain; aside from custody violations infractions were minor, and respondent timely paid most financial commitments); *Matter of Patch*, 20 Mass. Att'y Discipline Rep. 445, 445-446 (2004) (imposing three-month suspension, as stipulated by parties, for misconduct during attorney's own divorce, including seven contempt judgments, filing incomplete and inaccurate financial statement, and failing to timely comply with order to pay fees, where all arrearages were paid, all contempt was cleared, and respondent presented evidence of clinical depression).

Here, the hearing committee did not credit the respondent's proffered mitigating factors, and this case arguably merits a sanction even more severe than that imposed in *Matter of Okai*, where multiple aggravating factors are present, and, as the hearing committee observed, "[e]ach type [of misconduct] played a different role in service of the respondent's aggressive and persistent refusal to acknowledge the authority of the probate court to resolve her divorce and the authority of the Appeals Court and [this court] to review the probate court and to put the divorce litigation to an end."

After careful review of the record, and giving due deference to the board's recommendation in light of the substantial aggravating factors and lack of mitigating factors, we conclude that the sanction imposed by the single justice in this case is not markedly disparate from sanctions imposed in similar cases.

4. *Conclusion.* For the foregoing reasons, we affirm the order of the single justice suspending the respondent from the practice of law for a term of eighteen months.

So ordered.

The case was submitted on the record, accompanied by a memorandum of law.

Maude Laroche-St. Fleur, pro se.

SHELDON SCHWARTZ *vs.* BOARD OF REGISTRATION IN MEDICINE. October 27, 2022. *Board of Registration in Medicine. Doctor*, License to practice medicine. *Jurisdiction*, Administrative matter. *Administrative Law*, Evidence. *Constitutional Law*, Trial by jury.

The petitioner, Sheldon Schwartz, appeals from a judgment of a single justice of this court affirming a final decision and order of the Board of Registration in Medicine (board) suspending indefinitely his license to practice medicine. We affirm.

Procedural background. In December 2015, the board issued a statement of allegations and order to show cause why the board should not discipline Schwartz. The board alleged that Schwartz committed misconduct in the practice of medicine; that he lacked good moral character and engaged in conduct that undermines public confidence in the integrity of the medical profession; and that, by his actions, he violated Board of Registration in Medicine Policy No. 01-01 (disruptive physician behavior policy). The board referred the matter to the Division of Administrative Law Appeals (DALA), and an administrative magistrate held a hearing over eight days in 2016. The magistrate subsequently issued a recommended decision finding that Schwartz's disruptive behavior on two separate occasions amounted to misconduct and demonstrated that he engaged in conduct that undermines the public confidence in the integrity of the medical profession. On this basis, the magistrate concluded that Schwartz is subject to discipline by the board.[1]

The board adopted the findings and conclusions of the magistrate, over various objections from Schwartz, and, after further briefing by the parties on the issue of sanctions, concluded that Schwartz's actions warranted an indefinite suspension of his license to practice medicine. In issuing the sanction, the board also provided that any petition to stay the suspension would be conditioned on Schwartz's completion of (1) a new evaluation by Physician Health Services and following any recommendations resulting from the evaluation; (2) a board-approved course in anger management; and (3) a board-approved course in conflict management.

Schwartz thereafter filed a petition for judicial review in the county court pursuant to G. L. c. 112, § 64, and a single justice of this court affirmed the board's decision. Schwartz appeals.

Relevant factual background. The magistrate's recommendation that Schwartz be subject to discipline stems, principally, from incidents that occurred on two different dates, while Schwartz was employed as an internist at Arbour-HRI Hospital (Arbour), a psychiatric hospital in Brookline. On February 28, 2013, at the end of a daily meeting, at which Arbour's senior management met to review and discuss admissions, discharges, clinical issues, and other matters, Schwartz, who did not regularly attend the daily meetings, knocked and entered the meeting room. He was specifically concerned about access to certain patient records while the hospital's computerized medical records system was offline for maintenance. He was upset, agitated, and loud. A nurse executive, Michelle McIntosh, led him away from the meeting room, which was located in the executive suite at the hospital, to take him to meet with Arbour's chief financial officer, James Rollins. Rollins had not been at the meeting. While McIntosh and Schwartz were looking for Rollins, Schwartz called McIntosh a "bitch" while they were in a hallway outside the executive suite. After McIntosh and Schwartz found Rollins, McIntosh told him what had happened at the meeting. Cheryl Grau, a social worker and the clinical services director at Arbour, was also

[1]The magistrate issued the recommended decision in December 2020, more than four years after the 2016 hearing.

present for part of the meeting with Rollins, but she left after Schwartz told her that she was "corporate now" and that he could "buy and sell [her] a billion times."

On the other date relevant to the magistrate's decision, May 30, 2013, two different incidents occurred involving Schwartz and various coworkers. While Schwartz was finishing assessment notes on a patient in a treatment room, which also served as his office, a nurse asked him if Allison Ippolito, a social worker, and Jen Moran, a mental health worker, could use the room to examine a new patient. Schwartz responded "no" without explanation. Ippolito and Moran examined the patient in a bathroom instead.[2] When they returned with the patient to the treatment room, Schwartz and Dr. Krishnaswamy Gajaraj were outside the room arguing loudly, apparently about the necessity of medication for a particular patient. When Ippolito and Moran told the doctors that there was a patient in the treatment room who could hear them, Schwartz responded, "I don't care."

On the following day, Schwartz met with Patrick Moallemian, then Arbour's chief executive officer, to discuss the previous day's incidents. Schwartz admitted that he had been disruptive, and he apologized to at least some of the staff who had been present at the time. Moallemian gave Schwartz a letter of suspension, which had been prepared in advance, summarily suspending Schwartz based on his behavior. On the day that Schwartz's suspension ended, June 19, 2013, Schwartz resigned from Arbour.

In her recommended decision, the magistrate also noted the following, among other things: that Schwartz was good with patients; that some medical staff agreed with Schwartz's view about patient care at Arbour and appreciated his efforts to improve patient safety; that Schwartz and Moallemian had a tense relationship; that Schwartz had a positive relationship with, and was respected by, two of Arbour's former medical directors; and that following an incident in September 2013, Moallemian was dismissed from Arbour and that McIntosh was asked to resign.

Additionally, of note, this was not Schwartz's first violation of the disruptive physician behavior policy. In 2012, he entered into a consent order with the board in which he admitted to violating the policy and pursuant to which the board issued a reprimand against him.

Discussion. "Under G. L. c. 112, § 64, a person whose license to practice medicine has been [suspended, revoked, or canceled] may petition the court to 'enter a decree revising or reversing the decision . . . in accordance with the standards for review provided' in G. L. c. 30A, § 14 (7)." *Clark* v. *Board of Registration of Social Workers*, 464 Mass. 1008, 1009 (2013), quoting *Weinberg* v. *Board of Registration in Med.*, 443 Mass. 679, 685 (2005). "The court may modify or set aside the board's final decision only if the petitioner demonstrates that the decision was legally erroneous, procedurally defective, unsupported by substantial evidence, arbitrary or capricious, or contained one or more of three other enumerated defects not at issue here." *Weinberg*, *supra*, citing *Fisch* v. *Board of Registration in Med.*, 437 Mass. 128, 131 (2002). "This court reviews the Massachusetts board's decision directly, even though the appeal is from a decision of a single justice" (quotation and citation omitted). *Knight* v. *Board of Registration in Med.*, 487 Mass. 1019, 1022 (2021), and cases cited.

[2]Although this was not the first time a patient had been examined in the bathroom rather than in a treatment room, it was technically against hospital policy.

Schwartz's arguments can be loosely grouped into four categories: (1) that the board did not have the authority to issue a statement of allegations against him, and that DALA, in turn, did not have jurisdiction to consider those allegations; (2) that the magistrate improperly considered certain evidence at the hearing, and that the evidence was insufficient to support her recommended decision; (3) that he is entitled to a jury trial on the issue of the indefinite suspension of his license to practice medicine; and (4) that the board's decision to indefinitely suspend was legally erroneous or arbitrary and capricious. We address each of these in turn.

1. *Authority and jurisdiction of the board and DALA.* In its statement of allegations against him, the board alleged that Schwartz had violated the board's disruptive physician behavior policy, the relevant portions of which are set forth in the margin.[3] In Schwartz's view, the board did not have the authority to issue an allegation against him because the board did not establish both that his behavior was disruptive *and* that the behavior had an impact on patient care, which Schwartz argues is required by the policy. The policy, however, does not provide the sole basis upon which the board sought to discipline him. As the board noted in its statement of allegations, it may, pursuant to its regulations, discipline a physician upon proof that the physician has committed "[m]isconduct in the practice of medicine." 243 Code Mass. Regs. § 1.03(5)(a)(18) (2012). In other words, Schwartz need not necessarily have violated the disruptive physician behavior policy to be subject to discipline.

That said, we do not agree with Schwartz that his behavior did not have an impact on patient care.[4] When a patient overhears doctors arguing with each other, and hears a doctor state that he does not care that patients can hear the argument, there is an impact on patient care. Furthermore, even if much of Schwartz's disruptive behavior occurred outside of patients' hearing, that behavior clearly affected Schwartz's relationship with his colleagues, and it is not hard to imagine that this, in turn, can have an impact on patient care. There is, in short, no basis for Schwartz's argument that the board had no authority to issue the statement of allegations against him. Schwartz's argument that DALA

[3]Board of Registration in Medicine Policy No. 01-01 provides in relevant part:

> "The American Medical Association (AMA) has defined disruptive behavior as a style of interaction with physicians, hospital personnel, patients, family members, or others that interferes with patient care. The recent Institute of Medicine study concluded that health care systems must promote teamwork, the free exchange of ideas, and a collaborative approach to problem solving if medical errors are to be reduced. Disruptive behavior by a physician has a deleterious effect upon the health care system and increases the risk of patient harm.
>
> "The Board strongly urges physicians to fulfill their obligations to maximize the safety of patient care by behaving in a manner that promotes both professional practice and a work environment that ensures high standards of care. Behavior by a physician that is disruptive, and compromises the quality of medical care or patient safety, could be grounds for Board discipline. . . .
>
> "Behaviors such as foul language; rude, loud or offensive comments; and intimidation of staff, patients and family members are now recognized as detrimental to patient care." (Footnotes omitted.)

[4]There is no question that Schwartz's behavior was disruptive, and he himself does not genuinely argue otherwise.

lacked authority, or jurisdiction, is equally unavailing, stemming, as it does, from his argument regarding the board's purported lack of authority.

2. *Magistrate's consideration of the evidence.* Schwartz next raises a number of arguments related to the evidence presented at the DALA hearing, ranging from the magistrate's consideration of the evidence to the sufficiency of that evidence. He argues, for example, that the magistrate ignored certain testimony; that she improperly relied on unsworn testimony; and that she improperly relied on certain character evidence. To the contrary, the magistrate's recommended decision, which was adopted by the board, indicates careful and thoughtful consideration of the evidence. She specifically indicated which witnesses she found credible and reliable, and how those determinations affected her consideration of conflicting testimony. She also noted that she gave little or no weight to written statements from individuals who did not testify.

As to the latter point, Schwartz argues that the magistrate did, in fact, rely on a statement from an individual who did not testify, Ippolito. Furthermore, according to Schwartz, Ippolito's statement was the only evidence that a patient heard Schwartz and Gajaraj arguing outside a treatment room. That is incorrect. Among the exhibits admitted in evidence at the DALA hearing was an e-mail message from Schwartz to Moallemian, dated May 31, 2013, in which Schwartz admitted that he had been disruptive, that he was sorry that a patient had become upset by their behavior, and that he had apologized to the staff.

Schwartz also argues that individual members of the board defied State law or ignored certain unethical conduct on the part of the attorney representing the board in the proceedings against Schwartz. The arguments, at least some of which are being raised here for the first time, do not amount to adequate appellate argument. See Mass. R. A. P. 16 (a) (9), as appearing in 481 Mass. 1628 (2019). Schwartz's argument that he was prejudiced by the approximately four-year delay between the DALA hearing and the magistrate's recommended decision suffers from the same problem — that is, it does not amount to adequate appellate argument. We note as well that, during that period, Schwartz had not yet been subject to any discipline and his license to practice medicine, therefore, had not yet been suspended.

3. *Jury trial.* We next consider Schwartz's argument that the indefinite suspension of his license without a jury trial "offends" the Massachusetts Declaration of Rights. There is no merit to this argument. To the extent that Schwartz suggests that his license to practice medicine is a property right, he is correct, but that alone does not entitle him to a jury trial. See *Matter of Gargano*, 460 Mass. 1022, 1025 (2011), cert. denied, 566 U.S. 921 (2012) (no right to jury trial in matter involving suspension of license to practice law), and cases cited.

4. *Sanction.* Finally, we turn to the issue of the sanction — the indefinite suspension of Schwartz's license to practice medicine. As noted above, although we review the board's decision directly, we will only modify or set aside the decision if Schwartz demonstrates that the decision was "legally erroneous, procedurally defective, unsupported by substantial evidence, arbitrary or capricious." *Weinberg*, 443 Mass. at 685. Schwartz does not specifically contest the sanction. His dissatisfaction, at least so far as set forth in this court, lies largely with the DALA and board proceedings, but he says little about the sanction itself. We have nevertheless reviewed the record and agree with the single justice that it supports the board's conclusions that Schwartz engaged in mis-

conduct in the practice of medicine and violated the board's disruptive physician behavior policy and 243 Code Mass. Regs. § 1.03(5)(a)(18).

In reaching its decision, the board noted that it has imposed sanctions ranging from admonishment to license suspension for disruptive conduct and that a reprimand was the sanction most often imposed. Indeed, that is the sanction that the board imposed the first time that it found that Schwartz violated the disruptive physician behavior policy, in 2012. As the board also noted, in imposing sanctions it considers, among other things, patterns in a physician's misconduct. Where the board had already previously reprimanded Schwartz, a harsher sanction, in the circumstances, is neither legally erroneous nor arbitrary and capricious.

Conclusion. The board's decision, which adopted the magistrate's recommended decision, was supported by the evidence, and Schwartz has not demonstrated that the decision was legally erroneous, procedurally defective, or arbitrary or capricious. We therefore affirm the judgment of the single justice.

So ordered.

The case was submitted on briefs.
Sheldon Schwartz, pro se.
Timothy R. McGuire, Assistant Attorney General, for the respondent.

SUPREME JUDICIAL COURT
for the Commonwealth
Case Docket

SHELDON SCHWARTZ vs. BOARD OF REGISTRATION IN MEDICINE
SJC-13292

CASE HEADER

Case Status	Decided, Rescript issued	**Status Date**	11/25/2022
Nature	Nature to be determined	**Entry Date**	06/06/2022
Appellant	Plaintiff	**Case Type**	Civil
Brief Status		**Brief Due**	
Quorum	Budd, C.J., Gaziano, Lowy, Cypher, Kafker, Georges, Jr., JJ.		
Argued Date	10/03/2022	**Decision Date**	10/27/2022
AC/SJ Number	SJ-2021-0231	**Citation**	490 Mass. 1025
DAR/FAR Number		**Lower Ct Number**	SJ-2021-0231
Lower Court	SJC for Suffolk County	**Lower Ct Judge**	Dalila Argaez Wendlandt, J.
Route to SJC	Direct Entry: Appeal from Single Justice Order/Judgment		

INVOLVED PARTY	ATTORNEY APPEARANCE
Sheldon Schwartz Pro Se Petitioner/Appellant Blue brief filed	
Board of Registration in Medicine Respondent/Appellee Red brief & appendix filed	Debra G. Stoller, Esquire Timothy R. McGuire, A.A.G.

DOCUMENTS

Appellant Schwartz Brief
Appellee Board of Registration in Medicine Brief
Appellant Schwartz Reply Brief

DOCKET ENTRIES

Entry Date	Paper	Entry Text
06/06/2022	#1	Entered. (This matter is opened conditioned upon receipt of the entry fee of $300.00 payable to Commonwealth of Massachusetts within 10 days.)
06/15/2022		Filing fee paid by Sheldon Schwartz in two checks in amount of $270 and $30.
06/15/2022	#2	SERVICE of appellant's brief for Sheldon Schwartz by Sheldon Schwartz, Pro Se Petitioner/Appellant, Pro Se. (Note: Two copies filed.)
07/15/2022	#3	Appellee brief filed for Board of Registration in Medicine by Attorney Timothy McGuire.
07/15/2022		The clerk's office has received the appellee's brief through e-fileMA. The brief has been accepted for filing and entered on the docket. The appellee shall file with the clerk 4 copies of the brief within 5 days. The clerk's office may require additional copies if necessary. (Note: Cover of appellee's brief shall be red.)
07/19/2022	#4	Additional 4 copies of appellee's brief filed by Board of Registration in Medicine.
07/29/2022	#5	Motion to file a non-conforming record appendix filed for Board of Registration in Medicine by Attorney Timothy McGuire. (ALLOWED)
08/03/2022	#6	SERVICE of appellant's reply brief for Sheldon Schwartz by Sheldon Schwartz, Pro Se Petitioner/Appellant, Pro Se. (Note: One copy filed.)
08/11/2022	#7	Appellee Appendix (Part 1) filed for Board of Registration in Medicine by Attorney Timothy McGuire.
08/11/2022	#8	Appellee Appendix (Part 2) filed for Board of Registration in Medicine by Attorney Timothy McGuire.
08/11/2022	#9	Appellee Appendix (Part 3) filed for Board of Registration in Medicine by Attorney Timothy McGuire.
08/11/2022	#10	Appellee Appendix (Part 4) filed for Board of Registration in Medicine by Attorney Timothy McGuire.
08/11/2022	#11	Appellee Appendix (Part 5) filed for Board of Registration in Medicine by Attorney Timothy McGuire.
08/24/2022	#12	NOTICE: This matter shall be submitted for the court's consideration on the papers filed by the parties on October 3, 2022. By the Court. (9/19/22: Appellant called to inform the clerk's office with a correct mailing address. Address updated and notice sent.)
09/06/2022	#13	Returned Mail: Notice of Docket Entry (paper #12) sent to Sheldon Schwartz was returned by the post office. "Return to Sender. Not Deliverable as Addressed. Unable to Forward.". (9/19/22: Mr. Sheldon Schwartz called to inform the clerk's office the correct mailing address. Address updated and second notice sent.)
09/29/2022	#14	MOTION to request oral argument filed for Sheldon Schwartz by Sheldon Schwartz. (9/30/2022 The motion is DENIED).
09/29/2022	#15	MOTION for judicial notice filed for Sheldon Schwartz by Sheldon Schwartz, Pro Se. (Referred to the Quorum).
10/03/2022	#16	Submitted on brief(s). (Budd, C.J., Gaziano, J., Lowy, J., Cypher, J., Kafker, J., Georges, J.).
10/27/2022	#17	RESCRIPT (Rescript Opinion): Judgment affirmed. (By the Court)
11/25/2022		RESCRIPT ISSUED to trial court.

As of 11/28/2022 3:20pm