

COMMONWEALTH OF MASSACHUSETTS
BOARD OF REGISTRATION IN MEDICINE

MIDDLESEX, ss

Adjudicatory Case No. 2023-010
(RM-23-0085)

In the Matter of)
)
Christopher J. Kovanda, M.D.)
_____)

FINAL DECISION AND ORDER

Procedural History

This case arose from the Minnesota Board of Medical Practice's (Minnesota Board) August 4, 2022 discipline of Christopher J. Kovanda, M.D., (Respondent), who holds a lapsed Massachusetts license. After a five-day hearing, the Minnesota Board revoked the Respondent's license and assessed a \$15,360.00 civil penalty based on his engaging in sexual misconduct with two patients. On May 22, 2023, the Minnesota Court of Appeals affirmed the Minnesota Board's decision.

On February 2, 2023, this Board issued a Statement of Allegations (SOA) charging the Respondent with having been disciplined in Minnesota for reasons substantially the same as bases for Massachusetts discipline, as set forth in M.G.L. c. 112, §5 or 243 CMR 1.03(5).

The Respondent did not file an Answer to the SOA as required by 801 CMR 1.01(6)(d)(2). On March 30, 2023, the Parties appeared telephonically for a prehearing conference with the Division of Administrative Law Appeals (DALA). The Respondent indicated a willingness to execute a resignation form but did not do so.

On May 24, 2023, Complaint Counsel filed a Motion for Summary Decision relying on the Minnesota Board Order.¹ The Respondent did not file an Opposition to the Motion.

On August 21, 2023, DALA Administrative Magistrate John G. Wheatley (Magistrate) issued a Recommended Decision ruling on the Motion for Summary Decision, and ruling, too, on the merits of the Board's SOA charges.

Neither Party submitted Objections to the Recommended Decision (Objections). On October 12, 2023, Complaint Counsel submitted a Memorandum on Disposition recommending that the Board

¹ When a Party is of the opinion that there is no genuine issue of fact relating to one or more of the claims, he may move for summary decision as to the claim(s). 801 CMR 1.01(7)(h).

revoke the Respondent's inchoate right to renew his lapsed license. The Respondent did not file a Memorandum on Disposition.

The Board has reviewed the Recommended Decision and the Memorandum on Disposition. On the basis of its review, the Board adopts the Recommended Decision, which is attached hereto and incorporated by reference, and which concludes that the Respondent: 1. has committed misconduct in the practice of medicine;⁷ 2. has engaged in conduct which places into question his competence to practice medicine;⁸ 3. lacks good moral character and has engaged in conduct that undermines the public confidence in the integrity of the medical profession;⁹ and has violated an ethical principle, specifically American Medical Association Code of Medical Ethics, Opinion 8.14, which states that sexual contact concurrent with the patient-physician relationship constitutes sexual misconduct in the practice of medicine.¹⁰

Discussion

The Board has considered both the Board's ability to rely on the findings of fact and conclusions of law in Minnesota Board Order to preclude re-litigation of the issues and has considered the Respondent's acts with respect to Patients #2 and #3.

With respect to the Board's reliance on the Minnesota Order in its Motion for Summary Decision, the Board has a right to give preclusive effect to decisions of other state medical licensing boards. See *Ramirez v. Board of Registration in Medicine*, 441 Mass. 479, 482-483 (2004) (where a physician entered into consensual discipline in a foreign jurisdiction, the board need not be burdened with trying the case). The Massachusetts Supreme Judicial Court stated in *Anusavice v. Board of Registration in Dentistry*, 451 Mass. 786, 796 (2008), "Where...charges of serious professional misconduct have been brought before the licensing board of a foreign jurisdiction, and the professional is afforded the full opportunity to challenge the truth of those allegations, we see no need for the Massachusetts board to take on the burden of conducting an out-of-State investigation, and attempting to prove those allegations in order to impose reciprocal discipline."

The Minnesota Board concluded that the Respondent violated Minn. Stat. §147.091 subdivision l(t), for engaging in sexual conduct with both patients. In addition, regarding Patient #2, the Minnesota Board concluded that the Respondent engaged in unethical or improper conduct in violation of Minn. Stat. §147.091 subdivision l(g).

⁷ 243 CMR 1.03(5)(a)18.

⁸ 243 CMR 1.03(5)(a)3.

⁹ *Levy v. Board of Registration in Medicine*, 378 Mass. 519 (1979); *Raymond v. Board of Registration in Medicine*, 387 Mass. 708 (1982),

¹⁰ *Aranoff v. Board of Registration in Medicine*, 430 Mass. 830, 834 (1995).

Sanction

The Respondent engaged in sexual misconduct with two patients and, in doing so has committed misconduct in the practice of medicine, has engaged in conduct which places into question his competence to practice medicine, has engaged in conduct that undermines the public confidence in the integrity of the medical profession, and has violated an ethical principle, specifically American Medical Association Code of Medical Ethics, Opinion 8.14, which states that sexual contact concurrent with the patient-physician relationship constitutes sexual misconduct in the practice of medicine. See Raymond v. Board of Registration in Medicine, 387 Mass. 708 (1982); Levy v. Board of Registration in Medicine, 378 Mass. 519 (1979).

More than forty years ago, the Board pronounced:

The physician-patient relationship requires sound professional judgment, an acute sensitivity to the trust that is placed in the physician, and a high degree of integrity.

In the Matter of Donald M. Allen, M.D., Board of Registration in Medicine, Adjudicatory Case No. 407 (Final Decision and Order, December 19, 1980.)

The Board has dealt strictly with cases involving sexual misconduct, frequently determining that revocation of the physician's license is necessary to protect the public and to uphold the integrity of the medical profession. The Board has found that such conduct warrants a serious departure from good and accepted medical practice, and further, that such conduct demonstrates a complete abuse of patient trust. See In the Matter of Richard B. Hawkins, M.D., Board of Registration in Medicine, Adjudicatory Case No. 03-12-DALA (Final Decision and Order, December 15, 2004); and *In the Matter of David P. Ingalls, M.D.*, Board of Registration in Medicine, Adjudicatory Case No. 02-01-DALA (Final Decision and Order, November 13, 2003).

When deciding on an appropriate sanction, the Board has taken into account such factors as: the nature and extent of the overall misconduct, the number of patients involved, the duration of the misconduct, whether the physician self-reported the misconduct or admitted the misconduct and cooperated with the Board. *In the Matter of Terrence M. O'Neill, M.D.*, Board of Registration in Medicine, Adjudicatory Case No. 88-44-TR (Final Decision and Order, August 9, 1994).

In the pendant matter, the Board engaged in sexual misconduct with two patients. The Board identifies no mitigating factor. The Board notes that the Respondent participated in a pre-hearing conference, but the Respondent has not participated in the administrative process since that time.

In consideration of the Board's grave concern about sexual misconduct, the Board REVOKES the Respondent's inchoate right to renew his license to practice medicine. The Respondent shall provide a complete copy of this Final Decision and Order, with all exhibits and attachments within ten (10) days by certified mail, return receipt requested, or by hand delivery to the following designated entities: any in- or out-of-state hospital, nursing home, clinic, other licensed facility, or municipal, state, or federal facility at which he practices medicine; any in- or out-of-state health maintenance organization with whom he has privileges or any other kind of association; any state agency, in- or out-of-state, with which he has a provider contract; any in- or out-of-state medical employer, whether or not he practices medicine there; the state licensing boards of all states in which he has any kind of license to practice medicine; the Drug Enforcement Administration - Boston Diversion Group; and the Massachusetts Department of Public Health Drug Control Program. The Respondent shall also provide this notification to any such designated entities with which he becomes associated for the duration of the revocation of his license. The Respondent is further directed to certify to the Board within ten (10) days that he has complied with this directive. The Board expressly reserves the authority to independently notify, at any time, any of the entities designated above, or any other affected entity, of any action it has taken. The Respondent has the right to appeal this Final Decision and Order within thirty (30) days, pursuant to G.L. c. 30A, §§14 and 15, and G.L. c. 112, § 64.



Date: November 2, 2023

Julian Robinson, M.D. Chair
Board of Registration in Medicine