COMMONWEALTH OF MASSACHUSETTS

Division of Administrative Law Appeals

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BOARD OF REGISTRATION IN : Docket No. RM-22-0020

MEDICINE, :

*Petitioner*, :

 :

 v. :

 :

STEVEN P. COGSWELL, M.D., :

*Respondent*. :

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_:

**Appearance for Petitioner**:

 Darina Griffin, Esq.

**Appearance for Respondent**:

 Steven P. Cogswell, *pro se*

**SUMMARY OF (RECOMMENDED) DECISION**

 The Respondent was convicted of second-degree sexual misconduct involving a patient in his care at the correctional facility in which he worked in Michigan, and his license to practice medicine there was revoked. The Board moved for summary decision on the grounds that 1) the Respondent was convicted of a criminal offense, 243 Code Mass. Regs. § 1.03(5)(a)(7); 2) the Respondent’s conduct placed into question his ability to practice medicine, G.L. c. 112, § 5, ninth para. (g), and 3) the Respondent was disciplined in another jurisdiction by the proper licensing authority for reasons substantially the same as those set forth in G.L. c. 112, § 5 or 243 Code Mass. Regs § 1.03(5). The Respondent has not participated in these proceedings. The record establishes that the Board is entitled to summary decision.

**RECOMMENDED DECISION ON MOTION FOR SUMMARY DECISION**

 On January 20, 2022, the Board of Registration in Medicine (“BRM”) issued a Statement of Allegations seeking to discipline Steven P. Cogswell, M.D. (“Respondent”). The Respondent did not file an answer. The BRM now moves for summary decision, having filed a motion and three accompanying exhibits marked Exhibits A-C which are described at the end of this recommended decision. The Respondent has not opposed the BRM’s motion. For the reasons discussed below, I agree with the BRM that it is entitled to summary decision.

**FINDINGS OF FACT**

Based on the documents in the record submitted by the BRM, I make the following findings of fact:

1. The Respondent is Board-certified in family medicine. He was licensed to practice medicine in Massachusetts from February 25, 1994 until May 25, 1999 when his license was revoked by operation of law because he failed to renew it. He retains an inchoate right to renew his Massachusetts license. Statement of Allegations.
2. The Respondent was also licensed to practice medicine in Michigan and was doing so at the time of the conduct discussed below. Attachment C.[[1]](#footnote-1)
3. In 2018, the Respondent was employed at and provided treatment to female inmates at the Macomb County (Michigan) Jail. Id.
4. On December 5, 2018, the Respondent appeared in the Macomb County, Michigan Circuit Court having been charged with six counts of criminal sexual conduct in the second degree in violation of a Michigan statute, MCL 750.520c(1)(k). Attachment B.
5. The victims in the cases in which the Respondent had been charged were inmates at the Macomb County Jail who were under his care when the conduct in question occurred. Attachment C.
6. On March 6, 2019, the Disciplinary Subcommittee of the Michigan Board of Medicine issued an Order of Summary Suspension pertaining to Steven Cogswell’s license to practice medicine in Michigan. Id.
7. On or around January 15, 2020, the Respondent was convicted of one count of violating MCL 750.520(c). One count was dismissed following a directed verdict in favor of the Respondent and he was found not guilty on the four remaining counts. Attachment B.
8. On February 20, 2020, the Respondent was sentenced, *inter alia*, to 365 days in jail, with credit for time served, and to 5 years’ probation, and he was required to register as a sex offender. He completed his term of incarceration and was released. Id.
9. By “First Superseding Administrative Complaint” issued on April 15, 2020, the Michigan Board of Medicine alleged that Dr. Cogswell was subject to discipline in that state for violating various provisions of that state’s public health code, 1978 PA 368, as amended, MCL 333.1101 *et seq.* Dr. Cogswell was alleged to have violated the following 5 sections of Michigan public health law:
10. § 16221(a), which authorizes disciplinary action against a licensee in Michigan for a “violation of general duty, consisting of negligence or failure to exercise due care, including negligent delegation to or supervision of employees or other individuals, whether or not injury results, or any conduct, practice or condition that impairs, or may impair, the ability to safely and skillfully engage in the health profession.”
11. § 16221(b)(1), which authorizes disciplinary action against a licensee in Michigan for “incompetence,” which is defined in § 333.16106(l) of the Michigan public health code as “a departure from, or failure to conform to, minimal standards of acceptable and prevailing practice for a health profession, whether or not actual injury to an individual occurs.”
12. § 16221(b)(vi), which authorizes disciplinary action against a licensee for lack of good moral character, which is defined in § 333.16104(6) of the Michigan public health code and MCL 338.41 to 338.47 as “the propensity on the part of the person to serve the public in the licensed area in a fair, honest, and open manner.”
13. § 16221(e)(vi), which authorizes disciplinary action against a licensee for “conduct by a health professional with a patient while he or she is acting within the health profession for which he or she is licensed or registered, including conduct initiated by a patient or to which the patient consents, that is sexual or may reasonably be interpreted as sexual, including, but not limited to, sexual intercourse, kissing in a sexual manner, or touching of a body part for any purpose other than appropriate examination, treatment, or comfort.”
14. § 16221(b)(xiii), which authorizes disciplinary action against a licensee for conviction of a criminal offense under section 750520c of the Michigan Penal Code.
15. Following an administrative hearing, on November 5, 2020, an administrative law judge in Michigan issued a “Proposal for Decision” (“PFD”) containing findings of fact and conclusions of law regarding Steven Cogswell’s eligibility to hold a license to practice medicine there. Id.
16. The Disciplinary Subcommittee of the Michigan Board of Medicine considered the PFD at its meeting held on January 20, 2021 and voted to adopt its findings of fact and conclusions of law. Ultimately, the summary suspension pertaining to the Respondent’s license to practice medicine in Michigan was dissolved and that license was permanently revoked effective January 27, 2021. Id.
17. On January 21, 2022, the BRM issued a Statement of Allegations seeking to impose discipline on Steven Cogswell based in part on his conviction in Michigan. Statement of Allegations. The matter was referred to DALA for a hearing. Id.
18. By notice issued January 27, 2022, DALA informed the parties that a pre-hearing conference would be held by telephone on February 17, 2022. The Petitioner’s counsel appeared at this conference; the Respondent did not. The Respondent also did not file an answer to the Statement of Allegations.
19. On or around May 23, 2022, the Petitioner filed a Motion for Summary Decision.
20. On August 2, 2023, I issued an Order to the parties directing the Respondent to file his opposition to that motion, if any, on or before September 1, 2023. I informed the parties that if no further documents were received by that date, DALA would decide the matter based on the evidence that was already contained in the record. To date, DALA has not received any opposition to BRM’s motion.

**DISCUSSION**

In its Statement of Allegations, the BRM sought relief under three specific grounds: 1) the Respondent was convicted of a criminal offense, 243 Code Mass. Regs. § 1.03(5)(a)(7); 2) the Respondent’s conduct placed into question his ability to practice medicine, G.L. c. 112, § 5, ninth para. (g), and 3) the Respondent was disciplined in another jurisdiction by the proper licensing authority for reasons substantially the same as those set forth in G.L. c. 112, § 5 or 243 Code Mass. Regs § 1.03(5). This third allegation goes on to cite specifically that the Respondent

1. engaged in conduct which places into question the physician’s competence to practice medicine. 243 Code Mass. Regs. §1.03(5)(a)(3)
2. committed misconduct in the practice of medicine. 243 Code Mass. Regs. § 1.03(5)(a)(18).
3. committed a crime. 243 Code Mass. Regs § 1.03(5)(a)(7).
4. committed a crime that reasonably calls into question his ability to practice medicine. G.L. c. 112, § 5, ninth para. (g).
5. engaged in conduct which undermines the public confidence in the integrity of the medical profession. Raymond v. Board of Registration in Medicine, 387 Mass. 708 (1982).

The Standard Adjudicatory Rules provide that summary decision is appropriate when “there is no genuine issue of fact relating to all or part of a claim or defense and be or she is entitled to prevail as a matter of law.” 801 Code Mass. Regs. § l.01(7)(g). As is further discussed below, the BRM has established that it is entitled to summary decision on all three grounds that it alleged.

As an initial matter, the Respondent did not file an answer to the BRM’s Statement of Allegations, failed to appear at the pre-hearing conference scheduled in this matter and then failed to respond to the BRM’s Motion for Summary Decision or DALA’s subsequent pre-hearing order. The failure to respond to allegations against a physician and the disregard of administrative directives in related proceedings has led to revocation of the right to renew a medical license. In the Matter of Kowalski, BRM Case No. 97-16-DALA (Final Decision and Order April 1, 1998); In the Matter of Kucharski, BRM Adjudicatory Case Number 2008-048 (Final Decision and Order April 14, 2010); In the Matter of Katzenberg, BRM Case Number 2017-044 (Final Decision and Order August 9, 2018). Dr. Cogswell is subject to discipline on that basis.

However, the Respondent is also subject to discipline based on the substantive allegations against him, as well. In cases of reciprocal discipline such as this one, the key issue is whether another licensing authority has disciplined the physician for reasons substantially similar to those provided under Massachusetts law. Board of Registration in Medicine v. Merchia, RM-18-0020 (DALA August 8, 2019). For the reasons that follow, I find that the Petitioner has met its burden to show that the grounds on which the Respondent was disciplined in Michigan are substantially similar to the those for which he could be disciplined in Massachusetts and the Board should take what disciplinary action it deems appropriate.

The Respondent is undoubtedly subject to discipline as the result of his criminal conviction under both Michigan and Massachusetts law. MCL 333.16221(b)(xiii); 243 Code Mass. Regs. § 1.03(5)(a)(7). The copy of the criminal docket included as Attachment B establishes that the Respondent has been convicted of a crime that would subject him to discipline in Michigan: second degree sexual misconduct. Similarly, in Massachusetts, convictions for any crime subject a physician to discipline. 243 Code Mass. Regs. § 1.03(5)(a)(7). Moreover, in Massachusetts crimes of a sexual nature have been grounds to discipline a physician, even if the victim in the case was not a patient of the physician. In the Matter of Metzger, Adjudicatory Case Number 2013-016 (Final decision and Order October 23, 2013) (discussing various cases and imposing discipline for conviction of, *inter alia*, a sexual offense involving 12-year-old child in another state). I find that the grounds for discipline based on criminal conviction in both Michigan and Massachusetts are substantially similar and that Dr. Cogswell could be disciplined in Massachusetts as a result of his conviction in Michigan.

Michigan law subjects a licensed physician to discipline if the physician engages in sexual conduct with a patient. MCL 333.16221(e)(vi). I find that there are substantially similar grounds in Massachusetts that would subject Dr. Cogswell to discipline. Discipline is also appropriate in Massachusetts when the physician becomes intimate with a former patient, even when criminal conduct is not involved. See Board of Registration in Medicine v. Brendel, Docket Number RM-12-234 (August 14, 2012) (discipline appropriate where physician and former patient had sexual relationship which began more than one year after patient’s care had been transferred because of the physician’s feelings for the patient). Dr. Cogswell is subject to discipline for engaging in sexual conduct with his victims because they were also his patients.

Michigan law subjects a physician to discipline for incompetence and lack of good moral character. MCL 333.16221(b)(1); MCL 333.16221(b)(vi). In Massachusetts, discipline has been imposed where the sexual conduct between the parties involves a then-current patient of the physician when criminal activity is not involved. Separate and apart from his criminal conviction for it, the underlying conduct that was the basis for the criminal charges against Dr. Cogswell involved sexual contact with then-current patients and therefore reasonably calls into question his competence to practice medicine as referenced in 243 Code Mass. Regs. § 1.03(5)(a)(3). This is misconduct in the practice of medicine as that term is used in 243 Code Mass. Regs §1.03(5)(a)(18) and is conduct that undermines the public confidence in the integrity of the medical profession. Weinberg v. Board of Registration in Medicine, 443 Mass. 679, 683 (2005) (finding that these three bases for discipline were implicated where a psychiatrist engaged in a sexual relationship with an individual while she was still his patient). In cases involving sexual misconduct with a current patient, license revocation is considered an appropriate remedy. In the Matter of Luis Santiago-Cruz, Adjudicatory Case No. 2013-055 (April 2, 2015) (discussing relevant cases and factors to consider in imposing discipline). Dr. Cogswell is subject to discipline on this basis.

Although Dr. Cogswell is not currently licensed to practice medicine in Massachusetts, discipline is still appropriate and warranted. Sexual contact with patients has also been grounds for revoking a physician’s inchoate right to renew his medical license. In the Matter of Faulhaber, Adjudicatory Case Number 2013-041 (Final decision and Order July 2, 2015) (Respondent's “absolute disregard” for physician-patient boundaries by engaging in sexual relationship and taking advantage of the vulnerability of a patient for his personal pleasure among factors cited in support of revoking inchoate right to renew medical license). Here, the patients[[2]](#footnote-2) in question were incarcerated in the correctional facility in which Dr. Cogswell worked. Dr. Cogswell took advantage of the patients’ lack of freedom generally and their lack of freedom to choose a medical provider and exploited the power differential between himself and his patients for his own personal gratification. Under the circumstances, Dr. Cogswell is subject to discipline.

**CONCLUSION**

Based on the foregoing, the Board’s motion for summary decision is **allowed**. The Board may impose such discipline on Dr. Cogswell as it deems appropriate in light of the facts and conclusions of law that can be drawn from the Statement of Allegations, the filings that were part of the disciplinary proceedings in Michigan and details in the criminal docket.

DIVISION OF ADMINISTRATIVE LAW APPEALS

 **Melinda E. Troy**

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 Melinda E. Troy

 Administrative Magistrate

Dated: November 1, 2023

**Appendix—Exhibit List**

1. Physician Profile for Steven Cogswell from the Commonwealth of Massachusetts Board of Registration in Medicine.

1. Copy of the Criminal Docket in People v. Cogswell, Macomb County Michigan Docket Number 2018-004052-FH.
2. Materials from the State of Michigan Board of Medicine related to the licensing of Steven Cogswell as a physician in that state, which included:

1. The First Superseding Administrative Complaint outlining the allegations against Dr. Cogswell dated April 15, 2020;
2. The Order of Summary Suspension, dated March 6, 2019; and
3. The Final Order of the Michigan Board of Medicine revoking Dr. Cogswell’s license to practice medicine in the State of Michigan, dated January 27, 2021.

To obtain a copy of the out-of-state disciplinary order, please contact the appropriate state’s medical licensing board directly.  A list of state medical boards and contact information is available at <https://www.fsmb.org/contact-a-state-medica-board/>.  You may also obtain a copy of the out-of-state disciplinary order by submitting a public records request (PRR) with the Massachusetts Board of Registration in Medicine.  PRR forms and additional information can be found at <https://www.mass.gov/board-of-registration-in-medicine-public-records>.

1. All references to an “Attachment” refer to the attachments appended to the Petitioner’s Motion for Summary Decision. [↑](#footnote-ref-1)
2. Because the conduct in question would subject Dr. Cogswell to discipline even if he had not been criminally convicted for it, I refer here to his conduct with the several prisoners referenced in the Michigan disciplinary proceedings described in Attachment C, not just the patient involved in the charge for which he was criminally convicted. [↑](#footnote-ref-2)