

COMMONWEALTH OF MASSACHUSETTS

Middlesex, ss.

Division of Administrative Law Appeals

Board of Registration in Medicine,
Petitioner

Docket No. RM-18-0018

v.

James Cowan, M.D.,
Respondent

Appearance for Petitioner:

Lisa L. Fuccione, Esq.
200 Harvard Mill Square, Suite 330
Wakefield, Massachusetts 01880

Appearance for Respondent:

Pro Se
28 West Third Street, Apartment 1347
South Orange, New Jersey 07079

Administrative Magistrate:

Bonney Cashin

Summary of Recommended Decision

The Respondent was convicted for illegally distributing a controlled substance. His New Jersey medical license was revoked for conduct that is also prohibited in Massachusetts. These circumstances warrant appropriate disciplinary action by the Massachusetts Board of Registration in Medicine. G.L. c. 112, § 5; 243 CMR 1.03(5)(a)(7), (12).

RECOMMENDED DECISION

Pursuant to G.L. c. 112, §§ 5, 61, and 62 and 243 CMR 1.03(5), on January 11, 2018, the Petitioner, the Massachusetts Board of Registration in Medicine ("Board" or "Massachusetts Board"), issued a Statement of Allegations against the Respondent,

James Cowan, M.D. Dr. Cowan was ordered to show cause why, following his conviction for illegally distributing a controlled substance and the revocation of his medical license in New Jersey, he should not be disciplined in Massachusetts. On January 12, 2018, the Board referred the matter to the Division of Administrative Law Appeals (DALA) for recommended Findings of Fact and necessary Conclusions of Law. On January 16, 2018, the Board mailed the Statement of Allegations and Order of Reference to Dr. Cowan's current address. The cover letter accompanying the Statement of Allegations advised Dr. Cowan that 801 CMR 1.01(6)(d) required him to submit any answer to DALA within 21 days of receipt of the Statement of Allegations. Dr. Cowan filed an undated answer that was received by DALA on February 14, 2018. I marked that answer "Pleading A" for identification.

The Board submitted a Motion for Summary Decision, a supporting memorandum, and proposed exhibits on May 25, 2018. I marked the motion "Pleading B." Dr. Cowan was permitted until June 25, 2018 to file an opposition to the Board's motion. He did not. Dr. Cowan did send a March 24, 2019 letter to DALA, which I marked "Pleading C" and view as his response to the Motion for Summary Decision. Dr. Cowan's pleadings do not contest his conviction or the revocation of his medical license in New Jersey. (Pleadings A, C). Consequently, the facts alleged in the Board's Motion for Summary Decision are not in dispute.

I enter the following exhibits into evidence from the documents submitted:

Ex. 1 New Jersey State Board of Medical Examiners Final Consent Order, ratified December 6, 2017.

Ex. 2 State of New Jersey Department of Law & Public Safety, Division of Consumer Affairs Order to Show Cause, dated May 6, 2016.

Ex. 3 Directives to Any New Jersey Medical Board Licensee Who is Disciplined, approved August 12, 2015.

Ex. 4 Board Referral of Dr. Cowan's Case to the Division of Administrative Law Appeals for Recommended Findings of Fact and Necessary Conclusions of Law, dated January 12, 2018.

UNDISPUTED FACTS

The following facts are not in dispute. Numbers 1-8 are repeated from the Statement of Allegations, with minor edits for clarity.

1. [James Cowan] was born on March 19, 1944. He graduated from Meharry Medical College in 1970 and specialized in psychiatry and forensic medicine.

2. [Dr. Cowan] was licensed to practice medicine in Massachusetts under certificate number 158076 from October 13, 1999 until March 19, 2011.

3. [Dr. Cowan] held an active license to practice medicine in New Jersey from March 9, 2000 until June 13, 2016.

4. After March 19, 2011, [Dr. Cowan] no longer had an active license in Massachusetts.

5. On June 13, 2016, [Dr. Cowan] and the New Jersey State Board of Medical Examiners (hereinafter "New Jersey Board") entered into a non-disciplinary agreement whereby [Dr. Cowan] agreed to cease practicing medicine in that state.

6. In March of 2017, [Dr. Cowan] was arrested in Bergen County, New Jersey and charged with multiple counts of distributing controlled substances including Adderall, Xanax, Subutex, Tylenol with Codeine, and Oxycodone.

7. On November 30, 2017, [Dr. Cowan] pled guilty to illegal distribution of a controlled substance, namely Adderall, in Bergen County Superior Court in New Jersey.

8. On December 6, 2017, the New Jersey Board and [Dr. Cowan] entered into a Final Consent Order which stipulated that [Dr. Cowan's] license to practice medicine in that state would be permanently revoked As part of the Final Consent Order [Dr. Cowan] stipulated to the following:

- a. From March 7, 2016 to May 6, 2016 [Dr. Cowan] was either hospitalized or residing in a nursing care facility. While he was in the hospital or in a nursing care facility [Dr. Cowan] gave his wife, who is not a licensed physician, access to his pre-signed prescription pads.
- b. During that same time period [Dr. Cowan] allowed his wife to medically evaluate and prescribe controlled substances, including Schedule II medications, to his patients.
- c. [Dr. Cowan] billed his patients' insurance companies for services rendered by him and his wife while he was in the hospital or residing in a nursing care facility.
- d. [Dr. Cowan] authorized prescriptions for controlled substances without first conducting a medical evaluation.
- e. [Dr. Cowan] failed to record in his patients' medical records any information pertaining to their prior medical history, prior testing, or the medical basis warranting the need for prescriptions for controlled substances.

CONCLUSION AND RECOMMENDATION

To protect the image of the medical profession, and to maintain the public's confidence in a physician's professional judgment, the Board may discipline a physician

if he has engaged in conduct that undermines public confidence in the medical profession. *Raymond v. Bd. of Reg. in Med.*, 387 Mass. 708, 713 (1982). G.L. c. 112, § 5 authorizes the Board to sanction physicians because of enumerated, proscribed conduct and to promulgate regulations “governing the practice of medicine in order to promote the public health, welfare, and safety.” The Board may also discipline physicians for violating these regulations. G.L. c. 112, § 5, eighth par. (h).

Germane to this case, the Board has the authority to discipline a physician convicted of “any crime.” 243 CMR 1.03(5)(a)(7); *Raymond v. Bd. of Reg. in Med.*, 387 Mass. 708, 713 (1982). Dr. Cowan concedes he was convicted of illegal distribution of a controlled substance. The Board may discipline Dr. Cowan on the basis of that conviction.

The Board also has the authority to reciprocally discipline a physician if he has “been disciplined in another jurisdiction in any way by the proper licensing authority for reasons substantially the same as those set forth in [G.L.] c. 112, § 5(c) and 243 CMR 1.03(5).”¹ 243 CMR 1.03(5)(a)(12). In its Final Consent Order, the New Jersey Board disciplined Dr. Cowan for allowing an unlicensed person to prescribe controlled substances on his behalf, billing insurance companies for services he did not provide, authorizing prescriptions for controlled substances without first conducting a medical evaluation, and failing to record patients’ medical information. This conduct is substantially the same as conduct prohibited by 243 CMR 1.03(5). *E.g.*, 243 CMR 1.03(5)(a)(3) (“[c]onduct which places into question the physician’s competence to

¹ Reciprocal discipline is warranted even when, as in this case, “discipline has been imposed in a foreign jurisdiction by consent.” *Ramirez v. Bd. of Reg. in Med.*, 441 Mass. 479, 482-483 (2004). Further, the Board does not need to re-litigate the underlying facts that resulted in the out-of-state discipline. *Id.*

practice medicine..."); 243 CMR 1.03(5)(a)(6) ("[k]nowingly permitting, aiding or abetting an unlicensed person to perform activities requiring a license"); 243 CMR 1.03(5)(a)(10) ([p]racticing medicine deceitfully, or engaging in conduct which has the capacity to deceive or defraud"). As such, the Board has the authority to discipline Dr. Cowan.

Dr. Cowan admitted to the Board's allegations. No material factual issues are in dispute. Therefore, the Board may discipline Dr. Cowan. 801 CMR 1.01(7)(h) (Motion for Summary Decision may be granted where "there is no genuine issue of fact").

Dr. Cowan argues that the Board should consider several mitigating factors when determining appropriate disciplinary action: prior to his conviction, he practiced for 45 years without incident; his offenses were committed while he was experiencing serious health problems, including alcohol dependency; he sincerely regrets his actions; and his health has subsequently improved—he is under a physician's care, and he has been in recovery with Alcoholics Anonymous for two-and-a-half years. (Pleadings A, C). These factors, he contends, weigh against any discipline that would entirely prevent Dr. Cowan from working in the medical field. Dr. Cowan does not seek to practice psychiatry, see patients, or write prescriptions. Instead, he seeks a "restrictive license" that would allow him to teach psychiatry, particularly in the area of substance abuse. (Pleading C). Dr. Cowan believes his prior training and mentoring of students as chief of psychiatry at East Orange General Hospital, along with his own personal experiences, qualify him to serve as an educator. *Id.*

Dr. Cowan was convicted for illegally distributing a controlled substance. Further, his New Jersey medical license was revoked for reasons that are substantially the

same as those described in 243 CMR 1.03(5). These circumstances warrant disciplinary action by the Massachusetts Board. 243 CMR 1.03(5)(a)(7), (12). I allow the Motion for Summary Decision and recommend that the Board impose appropriate discipline against Dr. Cowan, after considering the mitigating factors he raised.

DIVISION OF ADMINISTRATIVE LAW APPEALS

Bonney Cashin
Bonney Cashin
Administrative Magistrate

DATED: June 10, 2019