COMMONWEALTH OF MASSACHUSETTS

Middlesex, ss. Division of Administrative Law Appeals

Board of Registration in Medicine,
Petitioner

v. Docket No. RM-22-0111

Aaron S. Geller, M.D.,
Respondent

Appearance for Petitioner:

Tracy Morong, Esq.
Board of Registration in Medicine
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Appearance for Respondent:

Pro se
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Administrative Magistrate:

Kenneth J. Forton

SUMMARY OF RECOMMENDED DECISION

The Board of Registration in Medicine seeks to reciprocally discipline the Respondent. The grounds for his discipline in New Hampshire are substantially similar to grounds upon which the Board itself could have disciplined him. Therefore, the Division of Administrative Law Appeals recommends that the Board take appropriate action.

RECOMMENDED DECISION

The Division of Administrative Law Appeals (DALA) received this case on

referral from the Petitioner Massachusetts Board of Registration in Medicine ("the Board"), which sought recommended findings of fact and conclusions of law. On March 11, 2022, the Board issued a statement of allegations ordering Respondent Aaron S. Geller, M.D. to show cause why he should not be disciplined for having been previously disciplined by the New Hampshire Board of Medicine for reasons substantially the same as those set forth at G.L. c. 112, § 5 and 243 CMR 1.03(5).

On April 14, 2022, I held a status conference. The parties agreed to have the matter decided on written submissions. On September 8, 2022, the Board filed its argument and memorandum of law. The Board submitted a copy of the New Hampshire Board order of discipline, which I entered as Exhibit A; a copy of the resignation form that it sent to Dr. Geller, which I entered as Exhibit B; and a copy of the statement of allegations, which I entered as Exhibit C. On January 13, 2023, Dr. Geller submitted his opposition to the Board's argument. Subsequently, the administrative record was closed.

FINDINGS OF FACT

I make the following findings of fact:

1. Dr. Geller graduated with high honors from the University of Pennsylvania Medical School in 1991 and completed his "medicine and rehabilitation residency" at Tufts University in Massachusetts in 1995. (Ex. A.)

2. Dr. Geller received a license to practice medicine in Massachusetts on May 24, 1995, and a license to practice medicine in New Hampshire on October 7, 1998. (Exs. A, C.)

3. In 2001, Dr. Geller established Nashua Pain Management Corporation in New Hampshire, where he continues to practice. (Ex. A.)

4. Dr. Geller's Massachusetts medical license expired on May 25, 2002, after he failed to renew it. (Ex. C.)

5. In 2012 and 2013, at least three of Dr. Geller's former patients complained to the New Hampshire Board of Medicine about alleged misconduct and mistreatment. After an investigation into Dr. Geller's practice revealed further misconduct, the New Hampshire Board of Medicine decided to discipline him. (Ex. A.)

6. The New Hampshire Board of Medicine based its decision to discipline Dr. Geller on the following supported findings:

- Dr. Geller improperly described the suprascapular nerve in a manner that lacked "basic knowledge or competence;"
- Dr. Geller displayed unprofessional conduct when he failed to obtain authorization from Patient 1 before disclosing his confidential medical information;
- Dr. Geller failed to use sound medical judgment and failed to act in the best interests of Patient 3 by never speaking to him and by putting "his mission blended social theories ahead of the patient;"
- Dr. Geller failed to order adequate drug screens for patients treating chronic pain with opioids;
- Dr. Geller failed to review Patient 5's medical records or to perform a drug screen prior to prescribing opioids;
- Dr. Geller also failed to order a drug screen for Patient 5 and restarted her opioid therapy within 10 months of her intravenous heroin use;

- Dr. Geller failed to monitor properly Patient 5 and lacked the diagnostics supporting his decision to restart therapy;
- Dr. Geller failed to monitor Patient 7 by neglecting to perform a urine test and subsequently failed to "explain the morphine equivalency" in Patient 7;
- Dr. Geller prescribed high doses of opioids without monitoring Patient 9, which rose to the level of repeated negligence;
- Dr. Geller misrepresented his credentials by stating that he held a certification in Pain Medicine when the American Board of Medical Specialties does not recognize the Board of Pain Medicine; and
- Dr. Geller failed to properly maintain his electronic medical records and took records to his house for "storage."

(Ex. A.)

7. New Hampshire's Board of Medicine concluded that Dr. Geller engaged in unprofessional conduct and engaged in practice incompatible with the basic knowledge and competence expected of persons licensed to practice a specialty. In turn, on October 5, 2018, the New Hampshire Board of Medicine ordered Dr. Geller to pay a fine and take remedial education courses. It also assigned him Affiliated Monitors to survey his practice in accordance with RSA 329:17, VI (c) and (d) as well as N.H. Admin. Rule Med. 501.01(a). (Ex. A.)

8. Dr. Geller appealed the New Hampshire Board of Medicine's Order to the New Hampshire Supreme Court, which on December 20, 2019 held: "Based upon our review of the board's well-reasoned final decision and order, the relevant law, and the record submitted on appeal, we conclude that the respondent has not demonstrated

reversible error regarding any of the board's 11 specific findings of misconduct." *In re Appeal of Geller*, No. 2019-0009 (N.H. Dec. 20, 2019).

9. On June 8, 2021, approximately a year and a half after the New Hampshire Supreme Court affirmed the New Hampshire Board's Order, Dr. Geller applied to renew his Massachusetts medical license, which had expired in 2002. (Petitioner's motion.)

10. In the application, Dr. Geller admitted that disciplinary action had been taken against him. Because Dr. Geller disclosed to the Board that he had been disciplined by the New Hampshire Board of Medicine, the Licensing Committee requested his presence at a hearing on December 21, 2021. After the hearing, the Licensing Committee referred Dr. Geller's application for the renewal of his license to the full Board. (Petitioner's motion.)

11. On January 6, 2022, Dr. Geller went before the full Board. The Board then referred the matter to the Enforcement Division to investigate the events that resulted in his discipline by the New Hampshire Board of Medicine. (Petitioner's motion.)

12. On March 11, 2022, the Massachusetts Board issued a Statement of Allegations against Dr. Geller and an order to show cause why the Board should not discipline him. Within the order, the Board asserted that 243 CMR 1.03(5)(a)(12) allows it to discipline Dr. Geller based on evidence that he had "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 or 243 CMR 1.03(5)." (Ex. C.)

13. In the Statement of Allegations and corresponding order to show cause, the Board referred this case to the Division of Administrative Law Appeals, asserting that the New Hampshire Board of Medicine found the following:

i. The Respondent's record keeping "borders on the abysmal" and rarely included results of testing;

ii. The Respondent displayed unprofessional conduct when he failed to obtain Patient 1's authorization before disclosing confidential medical information;

iii. The Respondent's failure to order adequate drug screens for patients treating with opioids for chronic pain displayed medical practice that is incompatible with basic competence in treating such patients;

iv. The Respondent's failure to review Patient 5's medical records or perform drug screens prior to prescribing opiates constituted unprofessional conduct;

v. The Respondent's failure to order a drug screen and his decision to restart Patient 5 on opioid therapy within 10 months of her intravenous heroin use was incompatible with good medicine and amounts to professional misconduct given the high risk of the patient;

vi. The Respondent's prescribing of high dose opioids to Patient 9 without monitoring rose to the level of repeated negligence; and

vii. The Respondent misrepresented his credentials by adding "Pain Medicine" as a certification because the American Board of Medical Specialties does not recognize the Board of Pain Medicine.

(Ex. C.)

14. In Dr. Geller's response to the Board's argument, he admits that he was disciplined by the New Hampshire Board of Medicine but disputes its findings and conclusions, as well as the discipline it imposed.

CONCLUSION AND RECOMMENDATION

For the reasons stated below, I conclude that the Board proved its Statement of Allegations and recommend that the Board take appropriate action.

The Board may discipline a physician because of discipline imposed by another State's licensing authority, provided that the reasons for that discipline are "substantially the same" as those that would subject the physician to discipline in Massachusetts. 243 CMR 1.03(5)(a)(12). When there is no significant difference between another State's reasons for discipline and the grounds for discipline cognizable in Massachusetts, the doctrine of collateral estoppel prevents physicians from relitigating the underlying facts or questions decided against them in the foreign jurisdiction. *Haran* v. *Bd. of Registration in Med.*, 398 Mass. 571, 575 (1986); *Matter of Meyers*, RM-12-568 (BORIM May 22, 2013). In cases of reciprocal discipline, therefore, the issue is whether another licensing authority has disciplined the physician for reasons substantially similar to those provided under Massachusetts law, not whether the other licensing authority's findings are correct. *Board of Registration in Med.* v. *Merchia*, RM-18-0020, Recommended Decision, at *5 (DALA Aug. 8, 2019) ("The matter before the Division of Administrative Law Appeals is . . . not the underlying facts upon which the other jurisdiction disciplined the licensee, but rather the other Board's decision to discipline and whether the grounds for the discipline are substantially similar to any detailed in G.L. c. 112, § 5 or 243 CMR 1.03(5).").

In this matter, both parties admit that the New Hampshire Board of Medicine disciplined Dr. Geller. The New Hampshire Board disciplined Dr. Geller for a number of reasons, including: his inability to properly describe the suprascapular nerve; his failure to obtain a patient's approval before disclosing his medical information; his failure to hold patients' best interests over his own social theories; his failure to order drug screens for patients being treated with opioids; his failure to properly monitor patients on opioid therapy; his misrepresentation of his board certifications; and his failure to properly store and maintain electronic medical records.

In New Hampshire, conduct warranting discipline includes:

> [displaying] medical practice which is incompatible with the basic knowledge and competence expected of persons licensed to practice medicine or any particular aspect or specialty thereof [and has] engaged in dishonest or unprofessional conduct or has been grossly or repeatedly negligent in practicing medicine or in performing activities ancillary to the practice of medicine or any particular aspect or specialty thereof, or has intentionally injured a patient while practicing medicine or performing such ancillary activities.

RSA 329:17, VI, (c) and (d). New Hampshire's definition of unprofessional conduct is substantially similar to the Massachusetts Board's ability to discipline for:

> [c]onduct which places into question the physician's competence to practice medicine, including but not limited to gross misconduct in the practice of medicine, or practicing medicine fraudulently, or beyond its authorized scope, or with gross incompetence, or with gross negligence on a particular occasion or negligence on repeated occasions.

243 CMR 1.03(5)(a)(3).

The New Hampshire conduct described in the Massachusetts Board's Statement of Allegations also amounts to (1) failure to maintain medical records in accordance with 243 CMR 2.07 (13)(a); (2) failure to issue prescriptions for controlled substances in

accordance with G.L. c. 94C, § 19(a); and (3) advertising in a manner that is deceptive or misleading in violation of 243 CMR 2.07(11).

Therefore, I conclude that the reasons for Dr. Geller's discipline in New Hampshire are substantially the same as those that would subject him to discipline in Massachusetts.

At the status conference that preceded the filing of the parties' arguments, I informed Dr. Geller that he had a right to a hearing to present mitigating factors to the Board of Registration in Medicine. *See* G.L. c. 112, § 52D; G.L. c. 112, § 61; *Veksler v. Bd. of Registration in Dentistry*, 429 Mass. 650 (1999) (respondent has "right of allocution" to present mitigating factors to the Board). He elected to proceed on written submissions. I summarize his mitigation evidence. Dr. Geller is in his 60s and is trying to take care of his ailing father. He has not been accused of medical malpractice. He has published peer reviewed articles in eminent medical journals. He is board certified in pain management. Since 2003, he taught doctors safe prescribing practices. In 2003, 2004, 2011, 2015, and 2016 he lectured at St. Joseph's Hospital and Southern NH Medical Center, where he received high peer reviews. A random review of 27 of Dr. Geller's patients' medical records by the New Hampshire Board identified that only one patient at the date of record collection had high opioid dosing, an elderly man in whom the dose allowed him to work despite his many failed back surgeries. After Jordan Mandel, M.D., a peer monitor approved by the New Hampshire Board, had reviewed 20 records spanning decades of care, he concluded that Dr. Geller's care was exemplary with no misconduct and no need for any discipline.

Dr. Geller also seeks to collaterally attack the facts that the New Hampshire Board of Medicine found in its decision, which was affirmed by the New Hampshire Supreme Court. *See In re Appeal of Geller*, No. 2019-0009 (N.H. Dec. 20, 2019) (Dr. Geller failed to "[demonstrate] reversible error regarding any of the board's 11 specific findings of misconduct."). However, the fact that he was disciplined in New Hampshire, and not the facts that led to the discipline, forms the basis for the Massachusetts Board's Statement of Allegations. *See Haran v. Bd. of Reg. in Med.*, 398 Mass. 571, 577–80 (1986) (upholding a hearing officer's decision solely upon the evidence of discipline and the legal question whether the regulations, upon which this discipline was based, were substantially similar to Massachusetts regulations, and that reciprocal discipline is a permissible application of collateral estoppel).

Based on the foregoing, I conclude that the Board has proven its Statement of allegations by a preponderance of the evidence. The Board should take appropriate action.

DIVISION OF ADMINISTRATIVE LAW APPEALS

/s/ Kenneth J. Forton

Kenneth J. Forton
Administrative Magistrate

DATED: APR 19 2023