**COMMONWEALTH OF MASSACHUSETTS**

**Middlesex, ss. Division of Administrative Law Appeals**

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**Board of Registration in Medicine**,

 Petitioner,

 Docket No.: RM-23-0085

 v.

**Christopher Kovanda, M.D.**,

 Respondent.

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**Appearance for Petitioner**:

Rachel N. Shute, Esq.

Board of Registration in Medicine

178 Albion Street, Suite 330

Wakefield, MA 01880

**Appearance for Respondent**:

Christopher Kovanda, M.D., *pro se*

Minneapolis, MN 55439

**Administrative Magistrate**:

John G. Wheatley

**RECOMMENDED DECISION**

On February 2, 2023, the petitioner, Board of Registration in Medicine (Board), issued a statement of allegations ordering the respondent, Christopher Kovanda, M.D., to show cause why the Board should not discipline him based on the findings and discipline imposed by the Minnesota Board of Medical Practice (Minnesota Board). The Board referred the matter to the Division of Administrative Law Appeals (DALA) for recommended findings of fact and necessary conclusions of law. Dr. Kovanda has not filed an answer to the Board’s statement of allegations.

On May 24, 2023, the Board filed a motion for summary decision. In support of its motion, the Board attached documents from the proceedings in Minnesota as Exhibits 1 and 2. Dr. Kovanda did not file an opposition to the Board’s motion for summary decision.

**Findings of Fact**

 Based on the evidence in the record, I find the following facts to be undisputed:

1. At the request of the Minnesota Board’s Complaint Review Committee, an administrative law judge in Minnesota’s Office of Administrative Hearings held a hearing on May 9 through 13, 2022, concerning potential grounds for disciplinary action against Dr. Kovanda. (Ex. 1, at 1, 9.)
2. On June 14, 2022, the administrative law judge issued findings of fact and conclusions of law, based on which the judge recommended that the Minnesota Board take disciplinary action against Dr. Kovanda. (Ex. 1, at 9-30.)
3. The Minnesota Board adopted all of the administrative law judge’s findings of fact, noting in particular the following facts pertaining to two of Dr. Kovanda’s patients:

**Patient #2**

5. In 2019, Patient #2 saw Respondent for breast augmentation surgery.

6. During a pre-operative visit, Patient #2 signed some paperwork while she was seated in Respondent’s clinic. Respondent briefly caressed Patient #2’s leg with the back of his hand when he took the signed paperwork from Patient #2’s lap.

7. During a pre-operative visit, Respondent also directed Patient #2 to stand in front of a mirror while he stood close behind her with his hands on her hips.

8. On November 25, 2019, Respondent performed Patient #2’s breast augmentation surgery at Respondent’s clinic, and the following occurred before the surgery:

a. Patient #2 took medication and an IV was started, in a pre-operative room, before Respondent entered the room. There was some difficulty putting the IV in Patient #2, and she hyperventilated until after the IV was successfully inserted;

b. When Respondent entered the pre-operative room, he sat at Patient #2’s side and held her hand. Respondent then moved around to reposition himself near Patient #2’s feet, which were elevated. Respondent rubbed his erect penis, which was inside his medical scrubs, into Patient #2’s feet; and

c. When Respondent and Patient #2 were alone in the pre-operative room, Respondent pushed Patient #2’s legs apart and pressed his erect penis that was inside his scrubs into Patient #2’s vaginal area, over her underwear.

 . . . .

**Patient #3**

10. In 2010, Patient #3 saw Respondent at his office in Maple Grove, Minnesota, for carpel tunnel syndrome in both wrists, for breast reduction surgery, and for a tummy tuck (abdominoplasty).

11. During a visit Patient #3 had with Respondent in 2010, before surgery for breast reduction and abdominoplasty, Respondent lunged toward Patient #3, put both his hands on her breasts, and straddled her right knee, placing his testicles on that knee while Respondent and Patient #3 had their pants on (“2010 Incident”).

12. When Respondent put his testicles on her knee, Patient #3 straightened up in shock and Respondent quickly removed his testicles from her knee.

13. After the 2010 incident, Patient #3 went home and told her husband, who was a retired police detective, what had happened during her appointment with Respondent.

14. Patient #3’s husband accompanied Patient #3 to her next appointment with Respondent, and he sat in the waiting room during that appointment.

15. After the 2010 incident, Patient #3 underwent breast reduction surgery, abdominoplasty, and right carpel tunnel surgery with Respondent at North Memorial Hospital in 2010.

(Ex. 1, at 3-6.)

1. The Minnesota Board concluded that Dr. Kovanda violated Minn. Stat. § 147.091, subdivision 1(t), for engaging in sexual conduct with both patients. In addition, regarding Patient #2, the Minnesota Board concluded that Dr. Kovanda engaged in unethical or improper conduct in violation of Minn. Stat. § 147.091, subdivision 1(g). (Ex. 1, at 7.)
2. In consequence, the Minnesota Board revoked Dr. Kovanda’s license to practice medicine in Minnesota and ordered him to pay a civil penalty of $15,360.00. (Ex. 1, at 8.)
3. On May 22, 2023, the Minnesota Court of Appeals affirmed the Minnesota Board’s decision. (Ex. 2.)

**Conclusions of Law**

 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 Code Mass. Regs. § 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. *Board of Registration in Med.*, 398 Mass. 571, 575 (1986); *Matter of Meyers*, Adjudicatory Case No. 2012-027 (BORIM May 22, 2013).

 The Minnesota Board disciplined Dr. Kovanda for “unethical or improper conduct” and “sexual misconduct” with his patients. It cited the following statutory grounds for disciplinary action, under Minn. Stat. § 147.091:

(g) Engaging in any unethical or improper conduct, including but not limited to:

(1) conduct likely to deceive or defraud the public;

(2) conduct likely to harm the public;

(3) conduct that demonstrates a willful or careless disregard for the health, welfare, or safety of a patient;

(4) medical practice that is professionally incompetent; and

(5) conduct that may create unnecessary danger to any patient’s life, health, or safety, in any of which cases, proof of actual injury need not be established.

. . . .

(t) Engaging in conduct with a patient which is sexual or may reasonably be interpreted by the patient as sexual, or in any verbal behavior which is seductive or sexually demeaning to a patient.

 The above grounds for disciplinary action against a physician in Minnesota are substantially the same as those set forth in G. L. c. 112, § 5(c) and 243 Code Mass. Regs. § 1.03(5)(a)(3) & (18), which subject a physician to discipline based on:

3. Conduct 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; [and]

18. Misconduct in the practice of medicine.

Engaging in sexual conduct with a patient has been found to constitute gross misconduct in the practice of medicine, as proscribed by G. L. c. 112, § 5(c) and 243 Code Mass. Regs. § 1.03(5)(a)(3). See, e.g., *Daniels* v. *Board of Registration in Med.*, 418 Mass. 380, 381 (1994); *Friedman* v. *Board of Registration in Med.*, 408 Mass. 474, 475 (1990). By implication, sexual misconduct with a patient also constitutes misconduct in the practice of medicine, in violation of 243 Code Mass. Regs. § 1.03(5)(a)(18).

 Accordingly, the Board may impose reciprocal discipline on Dr. Kovanda based on the discipline imposed by the Minnesota Board, for reasons substantially the same as those set forth in G. L. c. 112, § 5(c) and 243 Code Mass. Regs. § 1.03(5)(a)(3) & (18). The Board may also impose discipline for conduct that indicates “lack of good moral character” and for “conduct that undermines public confidence in the integrity of the medical profession.” See *Raymond* v. *Board of Registration in Med.*, 387 Mass. 708, 713 (1982); *Matter of Medhat Michael, M.D.*, Adjudicatory Case No. 2015-017, at 2 (BORIM Apr. 4, 2019) (sexual misconduct with patients and employees subjected doctor to discipline for lack of good moral character and “for conduct that undermines the public confidence in the medical profession”). Lastly, the Board may discipline Dr. Kovanda for violation of “an ethical principle, specifically, American Medical Association Code of Medical Ethics, Opinion 8.14, which defines sexual contact concurrent with the patient/physician relationship as sexual misconduct in the practice of medicine.” See *Matter of John P. Katzenberg, M.D.*, Adjudicatory Case No. 2017-044, at 6 (BORIM Aug. 9, 2018).

**Conclusion**

 I recommend that the Board impose upon Dr. Kovanda the discipline it deems appropriate considering the findings and conclusions above and those of the Minnesota Board of Medical Practice in its disciplinary decision dated August 4, 2022, a copy of which is attached hereto.

DIVISION OF ADMINISTRATIVE LAW APPEALS

Signed by John G. Wheatley

John G. Wheatley

Administrative Magistrate

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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>.