COMMONWEALTH OF MASSACHUSETTS

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

**Board of Registration in Medicine**,

 Petitioner

v. Docket No. RM-20-0229

**Mrugeshkumar K. Shah, M.D.**,

 Respondent

**Appearance for Petitioner:**

 Patrick G. Fitzgerald, Esq.

 Board of Registration in Medicine

 200 Harvard Mill Square, Ste. 330

 Wakefield, MA 01880

**Appearance for Respondent:**

 *Pro se*

 809 Clack Dr.

Garland, TX 75044

**Administrative Magistrate:**

 **Kenneth J. Forton, Esq.**

**RECOMMENDED DECISION**

 On May 8, 2020, the Board of Registration in Medicine issued a Statement of Allegations against the Respondent, Dr. Mrugeshkumar K. Shah. Dr. Shah was licensed to practice medicine on October 24, 2001. However, his license lapsed in 2004, and he has not practiced medicine in Massachusetts since then. The Board seeks to discipline Dr. Shah for a series of violations tied to his April 9, 2019 conviction for conspiracy to pay and receive health care bribes and kickbacks, offering or paying and soliciting or receiving illegal remuneration in violation of the anti-kickback statute, and aiding and abetting. He was sentenced to 42 months incarceration that he is now serving. On June 27, 2019 the Texas medical Board suspended Dr. Shah for his criminal convictions.

 On May 22, 2020, I scheduled a pre-hearing conference for July 1, 2020. The Petitioner appeared for the conference, but Dr. Shah did not. On July 2, 2020, I ordered Dr. Shah to show cause why a default should not be entered against him for his failure to appear for the conference. I also ordered him to file his answer, as he did not do so by the 21-day deadline. *See* 801 CMR 1.01(6)(d). I also ordered Dr. Shah to choose whether he wanted an evidentiary hearing or would rather proceed on written submissions.

 On July 28, 2020, the Board informed DALA that it made contact with Dr. Shah, that he wanted to represent himself, and that he planned to answer the Statement of Allegations no later than July 31, 2020. The Board sought another pre-hearing conference and hoped to negotiate a Stipulation of Facts and then proceed with an evidentiary hearing to resolve any remaining issues of fact and mitigation. On July 29, 2020, Dr. Shah answered the Statement of Allegations and assured DALA that he wanted to participate in the appeal.

On August 10, 2020, I ordered the Board to file a status report no later than September 30, 2020 informing DALA of the progress the parties had made on negotiating the Stipulation. On September 30, 2020, the parties filed a joint status report, which included a stipulation of facts, outstanding issues for hearing, proposed exhibit lists, and proposed witness lists.

 On October 16, 2020, I informed the parties that (1) I would adopt the joint stipulations of fact that the parties submitted in their status report, and (2) as Dr. Shah did not plan on calling any witnesses and planned only to submit “letters of character, support, and mitigation,” I had determined that the matter could be decided on written submissions under 801 CMR 1.01(10)(c). I ordered the parties to file briefs and any further documents they wanted considered no later than December 4, 2020. On November 27, 2020, the Board requested to extend the deadline for filing written submissions to a date after March 18, 2021, when Dr. Shah was scheduled to be sentenced by the Court. On December 2, 2020, I allowed the motion and ordered the parties to file their briefs no later than April 16, 2021.

 On April 16, 2021, the Board filed its brief, which it styled “Petitioner’s Motion and Brief in Support for a Summary Decision.” The brief included six attachments, which I now enter into evidence:

 Exhibit A: Texas Medical Board Order, dated October 18, 2013;

 Exhibit B: Texas Medical Board Order of Termination, dated August 28, 2015;

 Exhibit C: Jury Verdicts and Instructions Excerpts for Docket No. 3:16-CR-00516-JJZ;

 Exhibit D: Texas Medical Board Order of Suspension, dated June 27, 2019;

 Exhibit E: Judgement, U.S. District Court, Northern District of Texas, Docket No. 3:16-CR-00516-JZZ; and

 Exhibit F: Notice of Appeal, Docket No. 3:16-CR-00516-JJZ(14), dated March 24, 2021.

Dr. Shah has not filed a brief or an opposition to the Board’s motion, nor any supporting documents.

**FINDINGS OF FACT**

The parties stipulated to the following facts:

1. The Respondent was born on June 24, 1974.
2. The Respondent graduated from Tulane University Medical School in 1999.
3. The Respondent obtained a full license to practice medicine in Massachusetts on October 24, 2001 under certificate Number 212815.
4. The Respondent’s full license to practice medicine in Massachusetts lapsed on June 24, 2004 for failure to renew.
5. The Respondent maintains an inchoate right to renew his full license to practice medicine in Massachusetts.
6. The Respondent obtained a license to practice medicine in Texas on March 28, 2003 under Certificate Number L-6714.
7. On October 18, 2013 the Respondent was disciplined by the Texas Medical Board for failure to provide operative reports in a timely manner, failure to respond to requests for reports, and failure to provide license and permit documentation to a surgery center upon request. (Exhibit A.)
8. On October 18, 2013, the Texas Medical Board ordered the Respondent’s practice to comply with eight consecutive monitoring cycles, complete twelve hours of continuing medical education, and submit an office policy or protocol statement regarding timely submission of reports. (Exhibit A.)
9. On August 28, 2015, the Texas Medical Board terminated its October 18, 2013 Order after the Respondent completed five of the eight chart monitoring cycles and was otherwise in compliance with all other terms and conditions of the Order. (Exhibit B.)
10. On April 9, 2019, a federal grand jury in the Northern District of Texas found the Respondent guilty of one count of Conspiracy to Pay and Receive Health Care Bribes and Kickbacks and three counts of Offering or Paying and Soliciting or Receiving Illegal Remuneration in Violation of the Anti-Kickback Statute, and Aiding and Abetting. (Exhibit C.)
11. On June 27, 2019, the Texas Medical Board ordered the Respondent’s license to practice medicine indefinitely suspended by operation of law as a result of his criminal convictions on April 9, 2019. (Exhibit D.)
12. On August 6, 2019, the Respondent filed motions for acquittal and for a new trial with the Court, and these motions were denied on March 20, 2020.
13. The Respondent intends to appeal his convictions upon being sentenced. (Exhibit F.)

I make one additional finding, as well, based on conduct that occurred after the parties agreed upon their stipulations:

1. On March 18, 2021 the Court entered final judgment against the Respondent. He was sentenced to 42 months concurrently for each of the charges. Up on his release, he will be on an additional year of supervised release. The Respondent and his co-conspirators were ordered to pay $40,339.37 total to two insurance companies. (Exhibit E.)

**CONCLUSION AND RECOMMENDATION**

The Board moves for summary decision under 801 CMR 1.01(7)(h). For the reasons stated herein, the Board’s motion is allowed.

The Board has the authority to discipline a physician for conduct that undermines public confidence in the integrity of the medical profession and conduct which shows a lack of good moral character, including conviction of a crime. *See* 243 CMR 1.03(5)(a)(7). The Board also has the authority to discipline a physician who has been convicted of a criminal offense which reasonable calls into question his ability to practice medicine. *See* G.L. c. 112, § 5, ninth par. (g).

Here, Dr. Shah was convicted of conspiracy to pay and receive health care bribes and kickbacks, offering or paying illegal remuneration in violation of the anti-kickback statute, and aiding and abetting. As part of a conspiracy Dr. Shah took bribes and kickbacks in return for referring patients to a health care facility and physicians who take federal payments. Dr. Shah made these referrals not in the clinical interest of the patients, but rather for the financial gain of himself and his co-conspirators. Patients receiving referrals from their doctors should be able to expect referrals that reflect the doctor’s best judgment and care for patients, and that is not driven by his own personal and financial interests. These crimes show a serious lack of moral character and call into question his ability to practice medicine.

 The fact that Dr. Shah has appealed his convictions and asserts his innocence does not mean that he can prevail on the Board’s motion. The Board is not required to wait until a physician has exhausted his appellate options before it can take action against his license. *See, e.g., Board of Registration in Medicine v. Greineder*, RM-00-238 (DALA Aug. 27, 2001) (allowing Board’s motion for summary decision while physician still appealing his conviction for homicide); *Board of Registration in Medicine v. Mukherjee*, RM-07-247 (DALA July 17, 2007) (denying motion to stay pending results of criminal appeal).

 Additionally, pursuant to 243 CMR 1.03(5)(a)(12), the Board may discipline Dr. Shah for his Texas misconduct if there is sufficient evidence to establish that he was disciplined in any way in a foreign jurisdiction (in this case, Texas) and the reason for the discipline was substantially the same as that for which discipline is authorized in Massachusetts. The Texas Medical Board’s October 18, 2013 Agreed Order and its June 27, 2019 Order of Suspension are discipline in a foreign jurisdiction. The evidence also establishes that the reasons for the Texas discipline are substantially the same as those for which discipline is permitted in Massachusetts. In 2013, Dr. Shah agreed that he did not timely provide operative reports, respond to requests for reports, and provide license and permit documentation to the surgery center. In Massachusetts, such conduct is subject to discipline under 243 CMR 2.07(13)(a) and (b).[[1]](#footnote-1) Then, in 2019, Dr. Shah was disciplined for having been convicted of felony criminal charges, essentially healthcare fraud. In Massachusetts, physicians convicted of crimes are subject to discipline under G.L. c. 112, § 5, ninth par. (g)[[2]](#footnote-2) and 243 CMR 1.03(5)(a)(7).[[3]](#footnote-3) Therefore, the Board has proven that it may discipline Dr. Shah for having been disciplined by the Texas Medical Board.

 Based on the foregoing, I conclude that there is no genuine issue of fact relating to the Board’s Statement of Allegations and, for the reasons stated above, that the Board is entitled to prevail as a matter of law. I therefore recommend that the Board’s motion for summary decision be allowed as to Dr. Shah’s conduct and that the Board impose appropriate sanctions against him.

SO ORDERED.

DIVISION OF ADMINISTRATIVE LAW APPEALS

Signed by Kenneth J. Forton

Kenneth J. Forton

Administrative Magistrate

Dated: Jul-8, 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. 243 CMR 2.07(13)(a) provides, in relevant part:

A licensee shall maintain a medical record for each patient that is complete, timely, legible, and adequate to enable the licensee or any other health care provider to provide proper diagnosis and treatment. . . . A licensee must maintain a patient’s records in a manner which permits the former patient or a successor physician reasonable access to the records within the terms of 243 CMR 2.00. 243 CMR 2.00 applies to all licensees including, but not limited to, those with active, inactive, lapsed, suspended, revoked, resigned or retired status.

243 CMR 2.07(13)(b) provides, in relevant part:

Upon a patient’s request, a licensee shall provide the following in a timely manner, to a patient, other licensee or other specifically authorized person:

1. The opportunity to inspect that patient's medical record, except in the circumstances described at 243 CMR 2.07(13)(e);

2. A copy of such record, except in the circumstances described at 243 CMR 2.07(13)(e);

3. A copy of any previously completed report required for third-party reimbursement. [↑](#footnote-ref-1)
2. G.L. c. 112, § 5 ninth par. (g) provides, in relevant part:

The board may, after a hearing pursuant to chapter thirty A, revoke, suspend, or cancel the certificate of registration, or reprimand, censure, impose a fine not to exceed ten thousand dollars for each classification of violation, require the performance of up to one hundred hours of public service, in a manner and at a time and place to be determined by the board, require a course of education or training or otherwise discipline a physician registered under said sections upon proof satisfactory to a majority of the board that said physician:—

. . .

(g) has been convicted of a criminal offense which reasonably calls into question his ability to practice medicine. [↑](#footnote-ref-2)
3. 243 CMR 1.03(5)(a)(7) provides, in relevant part:

A complaint against a physician must allege that a licensee is practicing medicine in violation of law, regulations, or good and accepted medical practice and may be founded on any of the following:

. . .

(7) Conviction of any crime. [↑](#footnote-ref-3)