

COMMONWEALTH OF MASSACHUSETTS

Middlesex, ss.

Division of Administrative Law Appeals

Board of Registration in Medicine,
Petitioner

Docket No.: RM-19-0551

v.

Lee Wolfer, M.D.,
Respondent

Appearance for the Petitioner:

James Paikos, Esq.
Board of Registration in Medicine
200 Harvard Mill Square, Suite 330
Wakefield, MA 01880

Appearance for the Respondent:

Pro Se
764 Coventry Rd.
Kensington, CA 94707

Administrative Magistrate:

Kristin M. Palace, Esq.

Summary of Recommended Decision

The Board of Registration in Medicine issued a Statement of Allegations on November 8, 2019 seeking to discipline Lee Wolfer, M.D. because she was disciplined in another jurisdiction for conduct that would be grounds for discipline in Massachusetts. The Board's motion for summary decision is granted. Discipline against Dr. Wolfer is recommended.

Recommended Decision

On November 15, 2019, the Massachusetts Board of Registration in Medicine (Board) issued a Statement of Allegations ordering Respondent Lee Wolfer, M.D. to show cause why she should not be disciplined because she had been disciplined in California, where she had been practicing medicine, by the Medical Board of California. Dr. Wolfer previously held a full license to practice medicine in Massachusetts which expired on September 5, 2003.

The Massachusetts Board referred this matter to the Division of Administrative Law Appeals (DALA) for an adjudicatory hearing on the Statement of Allegations. Dr. Wolfer filed an answer on December 12, 2019. At the telephonic prehearing conference on January 7, 2020, the Board stated its intention to file a motion for summary decision pursuant to 801 CMR 1.01(7)(h). The Board filed that motion on February 21, 2020. Dr. Wolfer thereafter requested and was granted multiple extensions for responding based on the occurrence of the COVID-19 pandemic. She was granted a further extension on the basis of a claim of severe illness. Her response to the motion for summary decision was due August 31, 2020. Dr. Wolfer failed to file a timely response.^{1,2}

For the reasons set out below, I conclude that the Board has proven its Statement of Allegations and recommend that the Board take appropriate action against Dr. Wolfer.

The Standard Adjudicatory Rules of Practice and Procedure provide that any party may move for summary decision. 801 CMR 1.01(7)(h). A motion for summary decision in an administrative proceeding is the functional equivalent of a motion for summary judgment in a civil proceeding. *Zoning Bd. of Appeals of Amesbury v. Housing Appeals Committee*, 457 Mass. 748, 763, 933 N.E.2d 74, 86 (2010). As in summary judgment, a motion for summary decision may be granted when no genuine issue of material fact exists and the moving party is entitled to prevail as a matter of law. In such a circumstance, a hearing serves no useful purpose. *Mass. Outdoor Advertising Council v. Outdoor Advertising Bd.*, 9 Mass. App. Ct. 775, 785-786, 405 N.E. 2d 151, 156-157 (1980). Thus, to be successful, a moving party must show, with competent

¹ On November 12, 2020, Dr. Wolfer filed several emails and attached a number of documents. These documents, discussed *infra*, did not directly respond to the Board's motion but instead attacked the validity of the California Board's proceeding.

² Dr. Wolfer also asked in an email that I order the Board to publish certain documents on its website. DALA has no authority to order the Board to include or exclude any material on its website.

evidence, an absence of a genuine issue of material fact as well as an entitlement to a decision in its favor under the applicable law.

In its motion, the Board argues that it is entitled to summary decision because 243 CMR 1.03(5)(a)(12) empowers the Board to discipline medical licensees who have “been disciplined in another jurisdiction in any way by the proper licensing authority for reasons substantially the same as those set forth in M.G.L. c. 112, § 5 or 243 C.M.R. § 1.03(5)”³ and the undisputed facts establish that Dr. Wolfer was disciplined by the Medical Board of California for conduct that would subject her to discipline in Massachusetts. The Board’s motion references a March 7, 2019 Decision and Order from the California Board that adopted a Stipulated Surrender of License agreed to by Dr. Wolfer.

As an initial matter, I note that the Board has jurisdiction over Dr. Wolfer despite the fact that Dr. Wolfer does not hold a current license to practice medicine in Massachusetts. There is no dispute that Dr. Wolfer previously held a full license to practice medicine in Massachusetts but that license expired in 2003 when she failed to renew it. Under the statutory scheme applicable to physician licensing in Massachusetts, any doctor who possesses a full license that has lapsed may not practice medicine in Massachusetts until such time as she files a renewal application, but the expiration of her license does not act as a bar to renewal. The statute provides that the “registration of any physician who does not file a completed renewal application together with the fee shall be automatically revoked, but shall be revived upon completion of the renewal process.” G.L. c. 112, § 2. The Massachusetts Supreme Judicial Court concluded that the Massachusetts statutory scheme provides a previously-licensed physician with an inchoate right to renew her license, and, importantly here, that the Board retains jurisdiction over a physician

³G.L. c. 112, § 5 authorizes the Board to discipline physicians and lists specific grounds for discipline. The Board’s regulations also set out those specific grounds for complaints at 243 CMR 1.03(5).

whose license has lapsed. *Wang v. Board of Registration in Medicine*, 405 Mass. 15, 18-19, 537 N.E.2d 1216, 1218-1219 (1989). The lapse of Dr. Wolfer's license thus presents no jurisdictional bar to the Board's proposal to discipline Dr. Wolfer.

It is undisputed that Dr. Wolfer consented to discipline by the Medical Board of California. On February 14, 2019, Dr. Wolfer signed a stipulation agreeing to surrender her California medical license, admitting that cause existed for the California Board to take action against her license as alleged in the California Board's First Amended Accusation, and waiving her rights to contest the allegations made in that Accusation.

The California Board's First Amended Accusation charged that Dr. Wolfer was unable to practice medicine safely because of a physical or mental illness and that she had prescribed and administered to herself dangerous drugs in a manner that was injurious to herself or to the public. In particular, the Board alleged that Dr. Wolfer was arrested at a local hospital after she became agitated, threw a chair, refused to leave the hospital grounds when instructed to do so, and provided false identification to police officers responding to the hospital's call. The Board also alleged that its Psychiatric Evaluator conducted a voluntary evaluation of Dr. Wolfer subsequent to the hospital arrest and determined that Dr. Wolfer carried diagnoses of major depressive disorder and somatic symptom disorder and was prescribed "large amounts" of opiate and benzodiazepine medications. The Evaluator noted that Dr. Wolfer's chronic use of these medications had led to a decline in her functioning. The Evaluator also concluded that Dr. Wolfer self-prescribed habit-forming medications, behaved in a disruptive manner during the hospital visit referenced above, failed to comply fully with her mental health treatment and her doctor's recommendations, failed to consistently take medications prescribed for her mental health, demonstrated an unspecified boundary issue with a patient, and was so fixated on the idea

that she was physically unwell that she constantly sought treatment despite reassurances from medical professionals that she was not ill. Finally, the Evaluator noted that two years prior Dr. Wolfer had participated in a psychiatric partial hospitalization program and later underwent an involuntary psychiatric hospitalization after attempting suicide by a drug overdose. Dr. Wolfer was also reportedly evasive during her evaluation regarding her history.

On March 7, 2019, the Medical Board of California formally adopted the Stipulated Surrender of License entered into by Dr. Wolfer and the California Board. The final Decision and Order became effective on March 14, 2019.

It is well settled that the Board may discipline a Massachusetts physician who has been disciplined in another jurisdiction if the out-of-state discipline was based on acts that would form the basis for discipline here. 243 CMR 1.03(5)(a)12. The Board may impose discipline without retrying the facts underlying the out-of-state action. When there is no significant difference between the “reasons” for discipline imposed by the Sister state and the cognizable grounds for discipline in Massachusetts, a physician has no right to a “second bite of the adjudicative apple.” *Haran v. Board of Registration in Medicine*, 395 Mass. 571, 575, 500 N.E.2d 268, 271 (1986). In such a case, collateral estoppel is proper and discipline is permissible. *Id.*

In her November 12, 2020 filing, Dr. Wolfer seeks that “second bite” at the apple by attacking the proceedings before the California Board. Dr. Wolfer alleges that the California Board’s Psychiatric Evaluator has a history of mental illness, has been convicted of at least one criminal offense, committed perjury on her licensing applications, and has a history of disruptive behavior.⁴ Dr. Wolfer further asserts that she agreed to give up her license only because she could not afford to continue to defend herself.

⁴ As support for her allegations, Dr. Wolfer provided the record of the Psychiatric Evaluator’s criminal conviction in Texas for driving while intoxicated; the Findings and Decision of the San Mateo Civil Service Commission in a case

These arguments are unavailing. Dr. Wolfer may not re-adjudicate the facts of the California case by collaterally attacking the credibility of the California Board's Psychiatric Evaluator. *Haran, supra*. Nor can Dr. Wolfer escape the fact that she agreed to give up her license and admitted that the California Board possessed sufficient grounds to discipline her. The only question is whether the acts for which she was disciplined in California would be grounds for her discipline in Massachusetts.

The California Board disciplined Dr. Wolfer for prescribing controlled substances to herself in an injurious manner. Massachusetts law requires that practicing physicians issue prescriptions for controlled substances only for legitimate medical purposes and while acting in the usual course of their professional practices. G.L. c. 94C, § 19. The purpose of both of these requirements is the same: doctors must prescribe medicine responsibly, carefully, and consistent with the appropriate medical purposes. Because these requirements are essentially the same, the grounds for discipline based on violating these precepts are substantially similar. Accordingly, the Board may discipline Dr. Wolfer for improper prescribing practices based on California's disciplinary action.

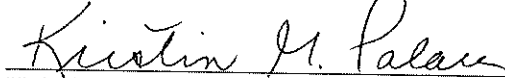
The California Board also disciplined Dr. Wolfer for her conduct at a hospital that resulted in her arrest. Massachusetts physicians may be disciplined for engaging in conduct that undermines public confidence in the integrity of the medical profession. *Levy v. Board of Registration in Medicine*, 378 Mass. 519, 392 N.E.2d 396 (1979) (license revocation proper after multiple convictions for grand larceny). *See also Raymond v. Board of Registration in Medicine*, 382 Mass. 708, 443 N.E.2d 391 (1982) (Board properly revoked physician's license after he was

that terminated the Evaluator's position as a staff psychiatrist at a mental health clinic for insubordination, failure to properly chart, and failure to work cooperatively as part of a team; an article from the Summer 2015 issue of *Defense Comment* detailing the Evaluator's unsuccessful civil lawsuit to overturn her termination by the San Mateo Civil Service Commission; and the Evaluator's California medical license applications from 1995, 2016, and 2018.

convicted of weapons offenses); *Aronoff v. Board of Registration in Medicine*, 420 Mass. 830, 652 N.E.2d 594 (1995) (license suspension proper where physician engaged in multiple commercial transactions with a patient contrary to the interests of the patient). Dr. Wolfer's disruptive conduct which led to an arrest in a hospital setting, combined with her providing false identification to the police, falls within the type of conduct that may undermine public confidence in the integrity of the medical profession and, as such, provides additional grounds for discipline by the Massachusetts Board.

Based on the foregoing, I conclude that there is no genuine issue of fact relating to the Board's Statement of Allegations and that the Board is entitled to prevail as a matter of law. I recommend that the Board's motion for summary decision be allowed and that the Board impose appropriate discipline upon Respondent Lee Wolfer, M.D.⁵

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Kristin M. Palace
Administrative Magistrate

Dated: NOV 30 2020

⁵ On November 16, 2020 the Board requested a status conference in the event there were outstanding issues pertaining to the motion for summary decision that needed to be addressed. As no outstanding issues presented themselves, there was no need to schedule a status conference.