COMMONWEALTH OF MASSACHUSETTS BOARD OF REGISTRATION IN MEDICINE

MIDDLESEX, ss

Adjudicatory Case No. 2022-005
(DALA No. RM-22-020)

In the Matter of)
)
Steven P. Cogswell, M.D.)
)

FINAL DECISION AND ORDER

Procedural History

The Board initiated this matter by issuing a January 20, 2022 Statement of Allegations (SOA) charging Steven Cogswell, M.D. (Respondent) with having been criminally convicted by a Clinton County Michigan District Court jury of second degree criminal sexual conduct with a county prisoner[1] and having been disciplined by the Michigan Board of Medicine for reasons substantially similar to bases for discipline pursuant to the Board's statute and regulations. The Board referred the SOA to the Division of Administrative Law Appeals (DALA) for further proceedings.

On January 27, 2022, DALA informed the Parties[2] that a pre-hearing conference would be held on February 17, 2022. Complaint Counsel participated in the pre-hearing conference. The Respondent did not.

On May 23, 2022, Complaint Counsel filed a Motion for Summary Decision[3] On August 2, 2023, DALA Magistrate Melissa Troy (Magistrate) issued an Order directing the Respondent to file his opposition to the motion, if any, on or before September 1, 2023. The Magistrate indicated to the Parties that, if no further documents were received by that date, DALA would decide the matter based on the evidence already in the record. DALA received no opposition to the Board's motion.

On November 1, 2023, DALA Magistrate Melissa Troy (Magistrate) issued a Recommended Decision on Motion for Summary Decision, ruled that there were no genuine issue of fact in dispute with respect to the Board's allegations, and recommended that the

[1] The criminal docket is appended to the Recommended Decision as Attachment B.
[2] Complaint Counsel Darina Griffin represents the Board. The Respondent is pro se.
[3] When a Party is of the opinion that there is no genuine issue of fact relating to one or more of the claims, he may move for summary decision as to the claim(s). 801 CMR 1.01(7)(h).

Board allow the Motion and impose appropriate discipline. The Recommended Decision is attached hereto and incorporated by reference. Neither Party filed Objections to the Recommended Decision. Neither Party filed Memoranda on Disposition.

After full consideration of the Recommended Decision, the Board ADOPTS the November 1, 2023 Recommended Decision and incorporates it into this Final Decision and Order.

Discussion

The record indicates the Respondent was licensed to practice medicine in Massachusetts from February 25, 1994 to May 25, 1999, when he failed to renew his license. The Respondent retains an inchoate right to renew his Massachusetts license.

The Respondent was also licensed in Michigan. In 2018, he was employed at and provided treatment to female inmates at the Macomb County (Michigan) Jail. On October 18, 2018, the Macomb County Prosecutor's office charged the Respondent with six counts of violating MCL 750.520c of the Michigan Penal Code, a felony otherwise known as second-degree criminal sexual conduct.

On January 15, 2020, following the jury trial, Respondent was convicted of one count of violating MCL 750.520c. On February 20, 2020, the Respondent was sentenced to 365 days in jail, with credit for time served, and to 5 years' probation, and he was required to register as a sex offender.

On January 20, 2021, the Michigan Board revoked the Respondent's license, based on conviction and related violations of five bases for discipline pursuant to §16221 of the Michigan Public Health Code, including: a) violation of general duty, consisting in negligence or failure to exercise due care (§16221(a)); b) incompetence, a departure from minimal standards of acceptable practice (§16221(b)); c) lack of good moral character, the propensity to serve the public in a fair, honest, and open manner (§16221(c)); d) conduct with a patient, including conduct initiated by a patient or to which the patient consents, that is sexual or may reasonably be interpreted as sexual for any purpose other than appropriate examination, treatment, or comfort (16221(d)); and e) conviction of a criminal offense (16221(e)).[4]

[4] Documents relating to the Michigan Board discipline are appended to the Recommended Decision as Attachment C.

The Michigan Board's bases for discipline are substantially similar to this Board's charges that the Respondent: 1) was convicted of a criminal offense;[5] 2) engaged in conduct that placed into question his ability to practice medicine;[6] and 3) was disciplined in another jurisdiction 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), specifically: a) engaging in conduct which places into question the ability to practice medicine;[7] b) committing misconduct in the practice of medicine;[8] c) committing a crime;[9] and d) committing a crime that reasonably calls into question his ability to practice medicine;[10] and e) engaging in conduct which undermines the public confidence in the integrity of the medical profession.[11] There are no facts in dispute with respect to the three grounds and the Board may impose discipline on each basis.

In addition, the Respondent's failure to file an answer SOA, failure to appear for the pre-hearing conference and failure to respond to the Motion for Summary Decision, reflects the Respondent's disregard of administrative directives, for which the Board may discipline.[12]

Sanction

"When determining the appropriate sanction...the Board takes into consideration the nature of the offense, whether the conduct...was related to the practice of medicine...and any mitigating or aggravating factors." See *In the Matter of Ronald S. Grusd, M.D.,* Board of Registration in Medicine, Adjudicatory Case. No. 2018-032) (Final Decision and Order, October 22, 2020).

The Board has stated, "[A]ny criminal behavior is antithetical to a commitment to preserve life, alleviate suffering, and restore health."[13] "The Board deals harshly with criminal

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[5] 243 CMR 1.03(5)(a)7.
[6] G.L. c. 112, § 5, ninth para. (g).
[7] 243 CMR 1.03(5)(a)3.
[8] 243 CMR 1 03(5)(a)18.
[9] 243 CMR 1.03(5)(a)7
[10] G.L. c. 112, § 5, ninth para. (g)
[11] *Raymond v Board of Registration in Medicine*, 387 Mass. 708 (1982).
[12] See e.g , *In the Matter of Kowalski,* Board of Registration in Medicine, Adjudicatory Case No. 97-16-DALA (Final Decision and Order, April 1, 1998); *In the Matter of Kucharski,* Board of Registration in Medicine, Adjudicatory Case No 2008-048 (Final Decision and Order, April 14, 2010); and *In the Matter of Katzenberg,* Board of Registration in Medicine, Adjudicatory Case No. 2017-044 (Final Decision and Order, August 9, 2018)
[13] See *In the Matter of John J Diggins, M D* , Board of Registration in Medicine, Adjudicatory Case No. 2021-021 (RM-21-175)(DALA Recommended Decision at p. 10, January 21, 2022).

convictions for sexual crimes."[14]

The Board has imposed revocation of the inchoate right to renew a license as the sanction, where physicians have engaged in sexual contact with patients. In two cases, the Board has commented on patients' vulnerability where physicians have commingled treatment with sexual contact. In one case, the Board commented on the physician's taking "advantage of any vulnerability by simultaneously pursuing a sexual/romantic relationship while offering to treat" the patient's anxiety and relieve [the patient] of some of her anxiety."[15] In another, the Board commented on the physician's "absolute disregard" physician-patient boundaries and his taking advantage of the vulnerability of a patient for his personal pleasure.[16]

In this case, the Board considers, as an aggravating factor, that the patient in question was incarcerated in the correctional facility in which the Respondent worked. The Respondent took advantage of the patient's lack of freedom generally and lack of freedom to choose a medical provider, and he exploited the power differential between himself and the patient for his own personal gratification.[17]

In light of the Respondent's criminal conviction, discipline by the Michigan Board, sexual misconduct that took place in the context of the physician-patient relationship, the particular vulnerability of the Respondent's patient, and the Respondent's complete disregard for the authority of the Board, the Board REVOKES the Respondent's inchoate right to renew his license.

The Respondent shall provide a complete copy of this Final Decision and Order, with all exhibits and attachments within ten (10) days by certified mail, return receipt requested, or by hand delivery to the following designated entities: any in- or out-of-state hospital, nursing home, clinic, other licensed facility, or municipal, state, or federal facility at which he practices medicine; any in- or out-of-state health maintenance organization with whom he has privileges or any other kind of association; any state agency, in- or out-of-state, with which he has a provider contract; any in- or out-of-state medical employer, whether or not he practices medicine there; the state licensing boards of all states in which he has any kind of license to

[14] See *In the Matter of Moutaz Almawaldi, M D*, Board of Registration in Medicine, Adjudicatory Case No. 2020-019 (Final Decision and Order, January 14, 2021)(Board revoked physician's inchoate right to renew his license for convicted for sexual battery involving a worker in his office).
[15] See *In the Matter of Luis Santiago-Cruz*, Board of Registration in Medicine, Adjudicatory Case No. 2013-055 (Final Decision and Order, April 2, 2015).
[16] *In the Matter of Faulhaber*, Board of Registration in Medicine, Adjudicatory Case No. 2013-041 (Final Decision and Order, July 2, 2015).
[17] See Recommended Decision at Tab 4, p. 9.

practice medicine; the Drug Enforcement Administration - Boston Diversion Group; and the Massachusetts Department of Public Health Drug Control Program. The Respondent shall also provide this notification to any such designated entities with which he becomes associated for the duration of this revocation. The Respondent is further directed to certify to the Board within ten (10) days that he has complied with this directive. The Board expressly reserves the authority to independently notify, at any time, any of the entities designated above, or any other affected entity, of any action it has taken. The Respondent has the right to appeal this Final Decision and Order within thirty (30) days, pursuant to G.L. c. 30A, §§14 and 15, and G.L. c. 112, § 64.

Date: February 29, 2024

Booker T. Bush, M.D., Chair
Board of Registration in Medicine