

THE COMMONWEALTH OF MASSACHUSETTS

Middlesex, ss.

Division of Administrative Law Appeals

Board of Registration in Medicine,
Petitioner

v.

Docket No. RM-19-0528

Alan H. Faustino, M.D.,
Respondent

Appearance for Petitioner:

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

Appearance for Respondent:

Pro se
10 11th Street, Unit 2
Ocean City, NJ 08226

Administrative Magistrate

James P. Rooney

Summary

Summary decision granted to Board of Registration in Medicine in case based on criminal conviction in another state and discipline by other states. The Board established that doctor was convicted of illegally prescribing Oxycodone with the intent that the patients to whom he prescribed would give him some of the medication to which he was addicted. Consequently, the doctor can be disciplined for the criminal conviction itself, *see* 243 CMR 1.03(5)(a)7, and because of the discipline imposed by other state boards that regulate medical practice, *see* 243 CMR 1.03(5)(a)12. He can also be disciplined for conduct that undermines public confidence in the integrity of the medical profession.

RECOMMENDED DECISION

On October 25, 2019, the Board of Registration in Medicine issued a Statement of Allegations against Alan H. Faustino, M.D. alleging that in 2018 he was convicted in New Jersey of possession with intent to distribute oxycodone and that, as a consequence

of this conviction, his license to practice medicine in Pennsylvania was suspended and he voluntarily surrendered his medical license in New Jersey. Dr. Faustino filed an answer in which he admitted the conviction, the suspension of his license in Pennsylvania, and asserted that he voluntarily surrendered his license in New Jersey on the date of his arrest.

The Board has now moved for summary decision. Its motion includes three exhibits labeled A through C. Dr. Faustino responded with a letter from his New Jersey attorney, Mark E. Roddy, Esq., who attached documents pertinent to the doctor's conviction, his sentencing, and his acceptance into a supervised probation program New Jersey calls an "Intensive Supervision Program." The letter includes eight attachments labeled 1 through 8. Along with the Statement of Allegations and the answer, I will consider the attachments filed by each party in ruling on the motion for summary decision.

Findings of Fact

The following facts are uncontested:

1. Dr. Alan H. Faustino was born in 1967 and graduated from Eastern Virginia Medical School in 1995. He held a license to practice medicine in Massachusetts from May 6, 1998 until April 18, 2001 when his license lapsed. (Allegations 1 and 2; Answers 1 and 2.)
2. Dr. Faustino decided to become a doctor after witnessing three people die in a car crash on an isolated island in the Caribbean and he was unable to help. He became licensed in New Jersey and Pennsylvania in 2001, practiced as an emergency room physician in Philadelphia, and then at an urgent care practice in southern New Jersey. He

spent two years developing a mobile electronic medical records system, then returned to practice medicine in private practice in New Jersey. (Faustino attachment 1.)

3. In 2005, Dr. Faustino was diagnosed with diabetes. Four years later, he was diagnosed with Crohn's disease. Over the next two years he was hospitalized three times because of Crohn's and was prescribed Vicodin to address the pain associated with this disease. He also developed diabetic peripheral neuropathy, which he described as "an extremely painful condition in which [a] diabetic's nerves start to die off in both their hands and feet." He was prescribed Percocet and then oxycontin to handle his neuropathy pain. (Faustino attachment 1.)

4. Dr. Faustino became addicted to pain medication by 2012. This harmed both his personal life – his wife divorced him – and his medical practice. He stated:

My office was not being run in a way that you would expect a professional office to run. I had lost my health insurance. I was still in extreme pain and needed medicine just to get through the day. I then started doing something that I never thought I would – I began writing prescriptions to two or three individuals with the understanding that they would give me some of the medicine back. The long acting Roxicodone is \$500.00 to \$800.00 a month without health insurance. I couldn't afford it and I needed it.

(Faustino attachment 1.)

5. Dr. Faustino was arrested in April 2015 following an inspection of his office by a New Jersey prosecutor's office, state consumer affairs investigators, and the federal Drug Enforcement Administration. He was indicted six months later on multiple drug charges. (Faustino attachment 1; Board Ex. A, pp. 1-13; Board Ex. B.) He pled guilty to an amended count of Second Degree Possession with Intent to Distribute Oxycodone and was originally sentenced in July 2018 to four years in prison. (Board Ex. A, p. 21.)

When considering what sentence to impose, the New Jersey judge determined that Dr.

Faustino had established a number of mitigating factors:

The defendant was self-medicating and his own drug use was very likely clouding his judgment and making appropriate determinations regarding both his medical practice, his interactions with others and his writing of prescriptions.¹ . . . The defendant has no history of prior delinquency or criminal activity and has led a law-abiding life for a substantial period of time before his involvement in the commission of the instant offense. . . . The defendant's conduct was the result of circumstances unlikely to recur. . . . The court has listened carefully to the defendant's current remorse, his current experience and attitude with respect to his criminal involvement and his attempts to rehabilitate himself to indicate that he is unlikely to involve himself in serious criminal activity again.

(Board Ex. A, p. 23.)

6. Dr. Faustino then applied to be resentenced to "special probation," which is the Intensive Supervision Program. In his application, he noted that his medical privileges were suspended in New Jersey and Pennsylvania right after his arrest. He said that he knew he might "be finished as a physician," but that he was trying to build a new life. Between his arrest and sentencing he had obtained an MBA from Temple University in finance. He had been able to obtain health insurance through the help of his father, and was being treated by psychiatrist William Hankin, M.D. (Faustino attachment 1.)

7. Dr. Hankin reported that he was treating Dr. Faustino for chronic pain and mood disorder. He noted that the doctor had undergone a Suboxone treatment program from May to November 2016 and had been in a pain treatment program with Subutex since October 2017. Urine tests had come back negative for any non-prescribed drugs. After observing that the doctor had remarried and was taking care of two children from his

¹ I have quoted the sentencing memorandum verbatim. I believe the judge meant to say that the doctor's drug use was impairing his ability to make appropriate determinations, etc.

previous marriage, Dr. Hankin concluded that “[d]espite his past lapse that got him into the current legal situation, he has shown himself to be of good character.” (Faustino attachment 5.)

8. An “ISP Assessment Report” prepared by a court services officer determined that Dr. Faustino was eligible for an Intensive Supervision Program that would require him to submit to evaluations for substance abuse and of his mental and physical health. The court services officer stated that:

During the institutional interview, the applicant presented himself in a respectful manner and was very outspoken about his struggles with addiction and his efforts to better himself since his arrest. Based on the positive progress that the applicant made while in the community prior to his incarceration, it is respectfully recommended that he be released on ISP for a ninety (90) day trial period. Mr. Faustino appears to be a very suitable candidate for the program and has displayed the motivation and discipline that is required to complete a program as demanding as ISP.

(Faustino attachment 4.)

9. Dr. Faustino was accepted into the Intensive Supervision Program. As he explained in his answer:

On January 30, 2019, I appeared in front of a 2-judge panel who released me into the community to begin this program. Approximately 3 months later, I appeared to the 2 judge ISP court and was re-sentenced to 16 months in the community program after completion of a probationary period. This program involves counseling, community service and successful full-time employment. I am currently in good standing with this program. The tentative completion date is May 30, 2020.

(Answer 6.)

10. Meanwhile, on October 24, 2018, the Pennsylvania State Board of Medicine issued a Notice and Order of Automatic Suspension of Dr. Faustino’s medical license because of his conviction in New Jersey. Dr. Faustino was given an opportunity to

request a hearing. When he did not respond to the notice, the State Board automatically suspended his license for ten years. (Board Ex. B.)

11. On March 8, 2019, Dr. Faustino and the New Jersey State Board of Medical Examiners entered into a consent agreement occasioned by his arrest and conviction. The doctor "voluntarily surrendered his [medical license] with such surrender to be deemed a permanent revocation" and agreed "to not reapply for a New Jersey medical license." (Board Ex. C.)

Discussion

The Standard Adjudicatory Rules provide that summary decision is appropriate when "there is no genuine issue of fact relating to all or part of a claim or defense and he or she is entitled to prevail as a matter of law." 801 CMR 1.01(7)(g). The Board has established that it is entitled to summary decision on all three grounds that it alleged.

Here, it is uncontested that Dr. Faustino was convicted in New Jersey of Second Degree Possession with Intent to Distribute Oxycodone. The Board of Registration in Medicine's regulations at 243 CMR 1.03(5)(a)7 provide that a doctor may be disciplined for "[c]onviction of any crime." The New Jersey conviction is a criminal conviction and thus the Board may discipline him because of it.

The same Board regulation at Subsection 12 provides that a doctor may be disciplined for "[h]aving 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 CMR 1.03(5)." What this means is that the reasons for discipline imposed in another jurisdiction must have been "substantially the same as those for which discipline is authorized in Massachusetts." *Ramirez v. Board of Registration in*

Medicine, 441 Mass. 479, 484, 806 N.E.2d 410, 414(2004) (internal quotations omitted). The Board has cited a case in which it disciplined a doctor for misprescribing controlled substances. *See Board of Registration in Medicine v. Puliafito*, Docket No. RM-18-0551, Final Decision and Order (Dec. 5, 2019). What Dr. Faustino concedes he did was prescribe controlled medication to certain patients with the understanding that some of the medicine would be returned to him for his own use. He was disciplined for this in New Jersey and Pennsylvania, and these acts would be subject to discipline in Massachusetts. Therefore, he may be disciplined under Subsection 12 as well.

Case law also establishes that the Board “has broad authority to regulate the conduct of the medical profession, which authority includes its ability to sanction physicians for conduct which undermines public confidence in the integrity of the medical profession.” *Sugarman v. Board of Registration in Medicine*, 422 Mass. 338, 343, 662 N.E.2d 1020, 1024 (1996) (citations omitted). It is not all that difficult to see that a doctor diverting controlled medications to feed his own addiction would be the sort of behavior than would undermine public confidence in the integrity of the medical profession. *See, e.g., Matter of Elizabeth Hingston, M.D.*, Board of Registration in Medicine, Adjudicatory Case No. 01-12-XX , Consent Order (June 13, 2001) (doctor’s license indefinitely suspended for, among other things, self-prescribing and appearing at work impaired). Thus, the Board may also discipline Dr. Faustino for diverting controlled substances for his own use because this might undermine public confidence in the integrity of the medical profession.

Doctor Faustino does not deny that he is subject to discipline. I understand the response to the motion for summary decision he sent through Attorney Roddy was

designed instead to present mitigating factors to the Board when it considers what discipline to impose. I have included in the fact section those facts that might potentially be mitigating. The gist of his position is that he became addicted as a consequence of the serious long-term illnesses he lives with,² his addiction affected his judgment, caused him to screw up his medical practice to such an extent that he somehow lost his medical insurance, which he needed to afford pain medication, led to the profound lapse of judgment involving having some patients kicking back medications to him, and resulted in his arrest. Beyond that, he offers that he has changed, he has recognized his problems, obtained proper treatment for his physical pain and his addiction, and has remarried and shown an ability to resume a normal law-abiding life. What exactly he is asking the Board to do is not clear from his filing, which relies on arguments presented to a court in an attempt to enter a structured probation program. He obtained an MBA while awaiting a resolution of the criminal case, which suggests he is seeking an alternate new career. Attorney Roddy, in his cover letter to the Dr. Faustino's filing stated that the doctor told him that "he is hopeful of obtaining a non-clinical job in the insurance industry, or in the alternative, practicing medicine on an Indian reservation out West."

Conclusion

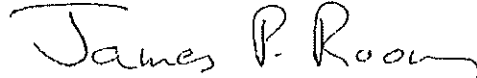
The Board of Registration in Medicine's motion for summary decision is granted. As described above, the Board has demonstrated that the doctor is subject to discipline because of (1) a criminal conviction, (2) discipline imposed by two other states, and (3)

² Board counsel pointed out that the Board has previously rejected a doctor's substance abuse as a mitigating factor. *See Board of Registration in Medicine v. Michael P. Anthony, D.O.*, Docket No. RM-08-820, Final Decision and Order (Apr. 20, 2011). This does not, of course, preclude the doctor from asking the Board to consider his particular circumstances.

for conduct that undermines public confidence in the integrity of the medical profession.

I recommend that the Board impose an appropriate discipline.

DIVISION OF ADMINISTRATIVE LAW APPEALS,

A handwritten signature in cursive script that reads "James P. Rooney". The signature is written in dark ink and is positioned above a horizontal line.

James P. Rooney
First Administrative Magistrate

Dated: **JAN -4 2021**