

COMMONWEALTH OF MASSACHUSETTS
Division of Administrative Law Appeals

BOARD OF REGISTRATION IN
MEDICINE,
Petitioner,

v.

SHAUN A. KINK, M.D.,
Respondent.

Docket No. RM-23-0474

Appearance for Petitioner:

Sheryl Bourbeau, Esq.

Appearance for Respondent:

Shaun A. Kink, *pro se*

Administrative Magistrate

Melinda E. Troy

SUMMARY OF RECOMMENDED DECISION

The Respondent practiced medicine in Illinois. He was convicted of solicitation of a sexual act. The conduct involved a patient in his care and his license to practice medicine in Illinois was suspended. The Board moved for summary decision on the grounds that 1) the Respondent was convicted of a criminal offense, 243 Code Mass. Regs. § 1.03(5)(a)(7); and 2) had engaged in conduct that undermined the public's confidence in the integrity of the medical profession pursuant to *Levy v. Board of Registration in Medicine*, 378 Mass. 519 (1978) and *Raymond v. Board of Registration in Medicine*, 387 Mass. 708 (1982). The record establishes that the Board is entitled to summary decision.

RECOMMENDED DECISION ON MOTION FOR SUMMARY DECISION

On September 21, 2023, the Board of Registration in Medicine ("BRM") issued a Statement of Allegations seeking to discipline Shaun A. Kink, M.D. ("Respondent"). The BRM now moves for summary decision, having filed a motion and three accompanying exhibits

marked Attachments A-C which are described at the end of this recommended decision. The Respondent has not opposed the BRM's motion; he asked only for an opportunity to present mitigating evidence. For the reasons discussed below, I agree with the BRM that it is entitled to summary decision.

FINDINGS OF FACT

Based on the documents in the record submitted by the BRM, I find the following facts to be undisputed:

1. The Respondent specializes in orthopedic surgery. He was licensed to practice medicine in Massachusetts from March 24, 2016, until June 11, 2019, when his license was revoked by operation of law because he failed to renew it. He retains an inchoate right to renew his Massachusetts license. Statement of Allegations.
2. The Respondent was also licensed to practice medicine in Illinois and was doing so at the time of the conduct discussed below. Attachment C.¹
3. In August 2019, the Respondent was employed as a physician in private practice and began to provide treatment to a female patient as the result of injuries she sustained [REDACTED] [REDACTED] This patient is a person with a disability as the result of this incident. Id.
4. On [REDACTED] ^{G.L. c. 4, § 7(26)(c)} 2019, the Respondent engaged in sexual conduct with the patient described above. She reported the incident to the authorities on the same day. Id.
5. On January 15, 2020, the Respondent was arrested and charged with four counts as described below. Attachment B.

¹ All references to an "Attachment" refer to the attachments appended to the Petitioner's Motion for Summary Decision.

6. On January 22, 2020, the Respondent was indicted by a grand jury in McLean County, Illinois on four counts: one count of Aggravated Criminal Sexual Assault in violation of an Illinois statute, 720 ILCS 5-11-1.30(a)(6); one count of Criminal Sexual Assault in violation of 720 ILCS 5/11-1.20(a)(1); one count of Aggravated Criminal Sexual Abuse in violation of 720 ILCS 5/11-1.60(a)(4); and one count of Criminal Sexual Abuse in violation of 720 ILCS 5/11-1.50(a)(1). Id.
7. The Chief of Medical Prosecutions of the Department of Financial and Professional Regulation/Division of Professional Regulation of the State of Illinois filed a “Petition for Temporary Suspension” of the Illinois Physician and Surgeon License issued to the Respondent based on the conduct described in the indictments. Attachment C.
8. By order dated February 25, 2020, the Department of Financial and Professional Regulation/Division of Professional Regulation of the State of Illinois granted that petition. The Order stated that the Acting Director of the Division of Professional Regulation “finds that the public interest, safety, and welfare imperatively require emergency action to prevent the continued practice of Shaun A. Kink, M.D., Respondent, in that the Respondent’s actions constitute an immediate danger to the public.” Attachment C.
9. On October 29, 2022, the Respondent was charged by way of information with a fifth count: one count of Solicitation of a Sexual Act in violation of 720 ILCS 5/11-14.1(a). Attachment B.
10. The underlying conduct related to the fifth count also occurred on G.L. c. 4, § 7(26)(c) 2019, and involved the same patient. Id.
11. On December 27, 2022, the Respondent pleaded guilty and was convicted of one count of

Solicitation of a Sexual Act in violation of 720 ILCS 5/11-14.1(a). The remaining four counts were dismissed by the prosecution, *nolle prosequi*². Id.

12. On the same day, the Respondent was sentenced, *inter alia*, to 120 days in jail, with credit for one day served, and to 18 months' probation, and as an additional condition, the Respondent was prohibited from engaging in the practice of medicine in any form. He completed his term of incarceration and was released. Id.
13. On September 21, 2023, the BRM issued a Statement of Allegations seeking to impose discipline on Shaun Kink based in part on his conviction in Illinois. The matter was referred to DALA for a hearing. Statement of Allegations.
14. The Respondent filed an answer to the Statement of Allegations, which DALA received on October 23, 2023.
15. Both parties participated in a pre-hearing conference on November 17, 2023.
16. On December 20, 2023, the Petitioner filed a Motion for Summary Decision.
17. On January 19, 2024, the Respondent filed a "Response to Petitioner's Motion and Brief in Support of Summary Decision". In that response, the Respondent conceded that the Petitioner has the authority to discipline him as the result of his criminal conviction, stating, "the Board reserves the right to discipline a physician that has been convicted of a crime, for [sic] which the Respondent accepts."

² "'Nolle prosequi' is a Latin phrase that means 'not to wish to prosecute.' . . . [A] nolle prosequi is entered by the prosecutor in order to terminate the prosecution of one or more charges." *Cruz v. Commonwealth*, 102 Mass. App. Ct. 685, 695. n. 6 (2023) (Rubin, J., dissenting) (citations omitted).

18. He further stated, “Respondent does not wish to challenge the factual basis that he was convicted of solicitation of a sexual act under Illinois law, nor does he wish to waste this court’s time with an evidentiary hearing [sic].” The response noted that the original indictment consisted of the four counts described above and that the fifth count was not added to the charges against him until October 2022.
19. The response further stated, “Respondent concedes that the Petitioner’s Motion for Summary Decision should be allowed; however, Respondent requests the opportunity to present the substantial mitigating factors *to the Board* before a final determination is made regarding disciplinary action on his license, and for such further relief *as the Board deems just and appropriate.*” (Emphases added).
20. Also on January 19, 2024, the Petitioner filed a brief reply to the response. In it, the Petitioner noted that it did not object to the corrections made by the Respondent with respect to the charges filed against him, but it also did not find the corrections to be relevant to the disposition of the Petitioner’s motion.

DISCUSSION

In its Statement of Allegations, the BRM sought relief under two specific grounds: 1) the Respondent was convicted of a criminal offense, 243 Code Mass. Regs. § 1.03(5)(a)(7); and 2) the Respondent had engaged in conduct that undermined the public’s confidence in the integrity of the medical profession pursuant to *Levy v. Board of Registration in Medicine*, 378 Mass. 519 (1978) and *Raymond v. Board of Registration in Medicine*, 387 Mass. 708 (1982).

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 Code Mass. Regs. § 1.01(7)(g). As is further

discussed below, the BRM has established that it is entitled to summary decision on both grounds that it alleged, which the Respondent does not dispute.

The Respondent is subject to discipline in Massachusetts. In cases of reciprocal discipline such as this one, the key issue is whether another licensing authority has disciplined the physician for reasons substantially similar to those provided under Massachusetts law. *Board of Registration in Medicine v. Merchia*, RM-18-0020 (DALA August 8, 2019). For the reasons that follow, I find that the Petitioner has met its burden to show that the grounds on which the Respondent was disciplined in Illinois are substantially similar to the those for which he could be disciplined in Massachusetts and the Board should take what disciplinary action it deems appropriate.

Both Illinois and Massachusetts law subject physicians to discipline upon criminal conviction under similar, though not identical, circumstances.³ 225 ILCS 60/22-20); Code Mass. Regs. § 1.03(5)(a)(7). In Illinois, discipline based solely on a criminal conviction may proceed if the conviction is a felony conviction. Pursuant to 225 ILCS 60/22(A):

The Department may revoke, suspend, place on probation, reprimand, refuse to issue or renew, or take any other disciplinary or non-disciplinary action as the Department may deem proper with regard to the license or permit of any person issued under this Act...upon any of the following grounds:

³ The Respondent makes no argument that disciplinary proceedings in Massachusetts would be precluded because his license to practice medicine in Illinois is currently suspended. Even if he had, the law has long been clear that the Board's reciprocal discipline regulation can be applied in a variety of contexts, not only after a final adjudication in the other state. *Ramirez v. Board of Registration in Medicine*, 441 Mass. 479, 482 (2004) ("[A]pplication of the regulation is not limited to contested disciplinary proceedings, where misconduct has been found by the foreign board or where the physician expressly admits to wrongdoing.") The BRM was authorized to proceed when it did in this case. Moreover, one element of the sentence issued in connection with his guilty plea in December 2022 was that the Respondent is prohibited from practicing medicine. Attachment B. Dr. Kink has admitted to wrongdoing related to his care of a patient in connection with his guilty plea.

(3) A plea of guilty or nolo contendere, finding of guilt, jury verdict, or entry of judgment or sentencing, including, but not limited to, convictions, preceding sentences of supervision, conditional discharge, or first offender probation, under the laws of any jurisdiction of the United States of any crime that is a felony.

In Massachusetts, convictions for any crime subject a physician to discipline. 243 Code Mass. Regs. § 1.03(5)(a)(7). I recognize that the crime for which the Respondent was convicted was a misdemeanor under Illinois law and that Massachusetts law reads more broadly, permitting the imposition of discipline for a physician convicted of any crime. However, as discussed above, the applicable law in Massachusetts governing reciprocal discipline does not require that the grounds for discipline in both states be identical in order to proceed. I find that the grounds for discipline based on criminal conviction in both Illinois and Massachusetts are substantially similar and that Dr. Kink could be disciplined in Massachusetts as a result of his conviction in Illinois.⁴

Even if the Board were to determine that the grounds for discipline based on criminal conviction in Illinois and Massachusetts were not “substantially similar” to a degree that would permit Massachusetts to impose discipline on that basis, Dr. Kink would be subject to discipline on other grounds without regard to his criminal conviction. Illinois law subjects a licensed physician to discipline if the physician engages in “immoral conduct in the commission of any act including, but not limited to, commission of an act of sexual misconduct related to the licensee’s practice.” 225 ILCS 60/22-20. I find that there are substantially similar grounds in Massachusetts that would subject Dr. Kink to discipline. In Massachusetts crimes of a sexual

⁴ Dr. Kink does not contest that he is subject to discipline in Massachusetts as the result of his Illinois conviction, noting in his response to the Petitioner’s Motion for Summary Disposition that, “[p]ursuant to 243 CMR 1.03(5)(a)(7) the Board reserves the right to discipline a physician that has been convicted of a crime, for [sic] which the Respondent accepts.”

nature have been grounds to discipline a physician, even if the victim in the case was not a patient of the physician. *In the Matter of Metzger*, Adjudicatory Case Number 2013-016 (Final decision and Order October 23, 2013) (discussing various cases and imposing discipline for conviction of, *inter alia*, a sexual offense involving 12-year-old child in another state).

Discipline is also appropriate in Massachusetts when the physician becomes intimate with a former patient, even when criminal conduct is not involved. *See Board of Registration in Medicine v. Brendel*, Docket Number RM-12-234 (August 14, 2012) (discipline appropriate where physician and former patient had sexual relationship which began more than one year after patient's care had been transferred because of the physician's feelings for the patient).

Separate and apart from his criminal conviction for it, the underlying conduct that was the basis for the criminal charges against Dr. Kink involved sexual contact with a then-current patient and therefore reasonably calls into question his competence to practice medicine as referenced in 243 Code Mass. Regs. § 1.03(5)(a)(3). This is misconduct in the practice of medicine as that term is used in 243 Code Mass. Regs §1.03(5)(a)(18) and is conduct that undermines the public confidence in the integrity of the medical profession. *Weinberg v. Board of Registration in Medicine*, 443 Mass. 679, 683 (2005) (finding that these three bases for discipline were implicated where a psychiatrist engaged in a sexual relationship with an individual while she was still his patient). In cases involving sexual misconduct with a current patient, license revocation is considered an appropriate remedy. *In the Matter of Luis Santiago-Cruz*, Adjudicatory Case No. 2013-055 (April 2, 2015) (discussing relevant cases and factors to consider in imposing discipline). Dr. Kink is subject to discipline on this basis.

Although Dr. Kink is not currently licensed to practice medicine in Massachusetts, discipline is still appropriate and warranted. Sexual contact with patients has also been grounds

for revoking a physician's inchoate right to renew his medical license. *In the Matter of Faulhaber*, Adjudicatory Case Number 2013-041 (Final decision and Order July 2, 2015) (Respondent's "absolute disregard" for physician-patient boundaries by engaging in sexual relationship and taking advantage of the vulnerability of a patient for his personal pleasure among factors cited in support of revoking inchoate right to renew medical license). Here, the patient in question was a person with a disability who was incapacitated by the incident which led her to seek medical treatment with Dr. Kink. On the date of the offense that led to his conviction, Dr. Kink sought out the victim G.L. c. 4, § 7(26)(c) and exploited the power differential between himself and his patient for his own personal gratification. Under the circumstances, Dr. Kink is subject to discipline.

CONCLUSION

Based on the foregoing, the Board's uncontested motion for summary decision is **allowed**. The Board may impose such discipline on Dr. Kink as it deems appropriate in light of the facts and conclusions of law that can be drawn from the Statement of Allegations, the filings that were part of the disciplinary proceedings in Illinois and details in the criminal docket.⁵

DIVISION OF ADMINISTRATIVE LAW APPEALS

Melinda E. Troy

Melinda E. Troy
Administrative Magistrate

Dated: FEB – 8 2024

⁵ To the extent that Dr. Kink wishes to submit evidence in mitigation before action is taken against his license in Massachusetts, that issue is one properly for the Board and is not before DALA. DALA's role is only to conduct an evidentiary hearing upon request and issue a Recommended Decision to the Board for its consideration. *See* St. 1989, c. 653, §233 and G.L. c. 112, §5.

Appendix—Exhibit List

- A. Physician Data Report for Shaun Kink from the Commonwealth of Massachusetts Board of Registration in Medicine.
- B. Copy of the Criminal Docket in People v. Kink, McClean County, Illinois Circuit Court of the 11th Judicial Circuit Docket Number 2020CF000040.
- C. Materials from the State of Illinois Department of Financial and Professional Regulation, Division of Professional Regulation related to the licensing of Shaun Kink as a physician in that state, which included:
 - 1. The Order of Suspension outlining the allegations against Dr. Kink dated February 25, 2020;
 - 2. The Petition for Temporary Suspension, undated; the associated complaint, a copy of the Information for a Count of Criminal Sexual Assault, copies of the indictments for Criminal Sexual Assault, Aggravated Criminal Sexual Assault, and Criminal Sexual Abuse.
 - 3. Correspondence to Dr. Kink notifying him that his privileges at Advocate BroMenn Medical Center were suspended, dated January 16, 2020, and
 - 4. The affidavit of Brian Zachariah, M.D., Chief Medical Coordinator of the Illinois Department of Financial and Professional Regulation, Division of Professional Regulation dated February 25, 2020, stating that in his opinion that Dr. Kink presented an immediate danger to the safety of the public in Illinois.