

COMMONWEALTH OF MASSACHUSETTS

Suffolk, ss.

Division of Administrative Law Appeals

---

**Board of Registration in Medicine,**  
Petitioner

Docket No. RM-15-193

v.

**Medhat Michael, M.D.**  
Respondent

---

**Appearance for Petitioner:**

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

**Appearances for Respondent:**

Medhat Michael, M.D., *pro se*  
P.O. Box 720911  
Oklahoma City, OK 73172

**Administrative Magistrate:**

Bonney Cashin

**SUMMARY OF RECOMMENDED DECISION  
ON MOTION FOR SUMMARY DECISION**

The Board of Registration in Medicine's Supplemental Motion for Summary Decision to discipline Medhat Michael, M.D., is allowed. Dr. Michael has failed to raise a material factual dispute regarding the Board's bases for applying reciprocal discipline based on disciplinary action in Oklahoma.

## RECOMMENDED DECISION

### INTRODUCTION

On March 11, 2016, the Petitioner, the Board of Registration in Medicine, filed a motion for summary decision arguing that there was no dispute that it could subject the Respondent, Medhat Michael, M.D., to reciprocal discipline, pursuant to G.L. c. 112, § 5 and 243 CMR 1.03(5)(a)(12). The Board based its reciprocal discipline on a voluntary submittal order, issued by the Oklahoma State Board of Medical Licensure and Supervision ("Oklahoma Board"). On December 5, 2017, I denied the Board's motion because, at the time, Dr. Michael's appeal of the Oklahoma Board's order was pending before the Oklahoma Supreme Court. *Board of Reg. in Med. v. Michael*, RM-15-193, Ruling on Motion for Summary Decision (Div. Admin. Law App., Dec. 5, 2017). I explained that the Board would have the opportunity to show that there is a basis to discipline Dr. Michael if the Oklahoma Supreme Court ruled against him. My ruling denying the Board's motion is attached and is incorporated by reference as if fully set forth in this recommended decision.

On April 13, 2018, following a status conference via telephone, the Board filed a Supplement to Its Motion for Summary Decision; I have marked this "A" for identification. On June 7, 2018, Dr. Michael filed a Response to the Board's Motion; I have marked this "B" for identification. I conclude that there is no genuine issue of material fact, and, as a matter of law, the Board is granted a full summary decision, pursuant to 801 CMR 1.01(7)(h).

In addition to Exhibits 1-9, referenced in my Ruling, I have entered the following additional exhibits into evidence:

Ex. 10          Supreme Court of Oklahoma Order denying Dr. Michael's petition for certiorari (Petitioner Supplement Exhibit A);

Ex. 11 Supreme Court of Oklahoma Order denying Dr. Michael's petition for rehearing and motion for oral argument (Petitioner Supplement Exhibit B);

Ex. 12 Oklahoma State Courts Network's online docket information for Dr. Michael's appeal from the Oklahoma Board of Medical Licensure and Supervision (Petitioner Supplement Exhibit C).

### **ADDITIONAL UNDISPUTED FACTS**

Based on the evidence in the record, the following additional facts are not in dispute:

15. On February 16, 2016, the Supreme Court of Oklahoma ruled that it had jurisdiction to hear Dr. Michael's appeal and allowed it to proceed. (Exhibit 8.)

16. On January 16, 2018, Dr. Michael filed a motion for oral argument with the Supreme Court of Oklahoma. (Exhibit 12 at 6.)

17. On January 29, 2018, the Supreme Court of Oklahoma denied Dr. Michael's petition for certiorari. (Exhibit 10.)

18. On February 15, 2018, Dr. Michael filed a petition for a rehearing with the Supreme Court of Oklahoma. (Exhibit 12 at 7.)

19. On March 5, 2018, the Supreme Court of Oklahoma denied both Dr. Michael's petition for a rehearing and his petition for oral argument. (Exhibit 11.)

### **DISCUSSION**

DALA may grant a party's motion for summary decision when "there is no genuine issue of fact relating to all or part of a claim or defense and [the party] is entitled to prevail as a matter of law." 801 CMR 1.01(7). An administrative hearing is not required when there is no material factual dispute between the parties, which would defeat the purpose of a hearing. *See Kobrin v. Board of Reg. in Med.*, 444 Mass. 837, 846 (2005); *Massachusetts Outdoor Advertising Council*

*v. Outdoor Advertising Bd.*, 9 Mass. App. Ct. 775, 785-86 (1980). While a party facing summary decision has the right to have the facts viewed in a light most favorable to him, this party is not entitled to a favorable decision. *Catlin v. Board of Reg. of Architects*, 414 Mass. 1, 7 (1992). The party opposing the motion must respond with “specific facts which establish that there is a genuine, triable issue” in order to defeat the motion for summary decision. *Community Nat’l Bank v. Dawes*, 369 Mass. 550, 554 (1976).

The Board is authorized to impose reciprocal discipline against physicians 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 Massachusetts laws and regulations. G.L. c. 112, § 5 (emphasis added); 243 CMR 1.03(5)(a)(12); *Matter of Russell J. Aubin, D.O.*, RM-06-68 (Board of Reg. in Med., Mar. 21, 2007). Professional licensing boards do not have to limit reciprocal discipline to cases “where misconduct has been found by the foreign board or where the physician expressly admits to wrongdoing.” *Ramirez v. Board of Reg. in Med.*, 441 Mass. 479, 482 (2004); *see e.g., Anusavice v. Board of Reg. in Dentistry*, 451 Mass. 786, 796 (2008) (affirming board’s reciprocal discipline based on other state’s consent order relating to dentist’s misconduct); *Lankheim v. Board of Reg. in Nursing*, 458 Mass. 1022, 1024 (2011) (affirming board’s reciprocal discipline because nurse’s out-of-state voluntary relinquishment constituted an admission of wrongdoing).

In my prior ruling, I stated that it would be premature to discipline Dr. Michael because he had appealed the Oklahoma Board’s order. *See Haran v. Board of Reg. in Med.*, 398 Mass. 571, 577-78 (1986). Since then, the Oklahoma Supreme Court denied Dr. Michael’s petition for certiorari and his petition for a rehearing. Dr. Michael has exhausted his appeals of the Oklahoma Board’s order. Now, the Massachusetts Board has the opportunity to show by a

preponderance of the evidence that there is a basis to discipline Dr. Michael under 243 CMR 1.03(5)(a)(12). The Board has met its burden.

Dr. Michael argues that the Board cannot show that the reasons for which he was disciplined in Oklahoma are for substantially the same reasons set forth in Massachusetts laws and regulations because the conduct forming the basis for the discipline was neither proven nor admitted to. Dr. Michael's argument is flawed. Professional licensing boards in Massachusetts are not obligated to prove allegations of licensee misconduct from foreign jurisdictions when the licensee has entered into a consent order to permanently relinquish his medical license in the other state. *Ramirez*, 441 Mass. at 483.

In *Ramirez*, the court held that a doctor was subject to reciprocal discipline in Massachusetts based on a Connecticut consent order, even though the doctor did not admit to any wrongdoing in the consent order. *Id.* at 480. By signing the Connecticut order, the doctor agreed the order would "have the same effect as if proven and ordered after a full hearing." *Id.* (internal citations omitted). The Court explained that by agreeing to the terms of this consent order, the doctor "voluntarily placed himself in the same position as a physician against whom findings had been made." *Id.* at 483. Likewise, by signing the Oklahoma Board's order, Dr. Michael acknowledged "that a hearing before the Board could result in some sanction" and that he "voluntarily waiv[ed] his right to a full hearing." (Ex. 4.)

In *Anusavice*, a dentist was subject to reciprocal discipline in Massachusetts based on a consent order between the dentist and the Rhode Island Board of Examiners in Dentistry. 451 Mass. at 788, 796-98. The Rhode Island order stated that the dentist "neither admits nor denies the . . . allegations" and "acknowledges and waives" his right to contest the allegations at a hearing before the Rhode Island Board. *Id.* at 788 (internal citations omitted). The court

rejected the dentist's argument distinguishing his consent order from *Ramirez*, because, although the dentist's order did not specify that "the consent order [had] the effect of the allegations being proved," the dentist acknowledged that the Rhode Island Board would report the consent order to the National Practitioner Data Bank.<sup>1</sup> *Id.* at 797, 800. Similar to *Anusavice*, Dr. Michael waived his right to a full hearing and acknowledged that the matter would be reported to the National Practitioner Data Bank. (Ex. 4.)

Second, Dr. Michael argues that the Oklahoma Board's order does not constitute discipline. He relies on a dictionary definition of discipline, which is "training that corrects...the mental faculties or moral character." *Discipline*, Merriam-Webster.com, <https://www.merriam-webster.com/dictionary/discipline> (last visited Aug. 2, 2018). Dr. Michael reasons that the Oklahoma Board could not have corrected conduct that he never admitted to. This argument fails to account for the Board's definition of discipline, which includes "voluntary or involuntary...revocation of a right or privilege." 243 CMR 1.01(2)(c)(1). By agreeing to the terms of the Oklahoma Board's order, Dr. Michael voluntarily relinquished his license, which constitutes a "revocation of a right or privilege." (Ex. 4.) As previously discussed, Massachusetts licensing boards are authorized to apply reciprocal discipline when the licensee has not explicitly admitted to the foreign jurisdiction's allegations. *See Ramirez*, 441 Mass. at 482-83; *Anusavice*, 451 Mass. at 796; *Lankheim*, 458 Mass. at 1024 (declining to find significance in fact that nurse did not admit any wrongdoing in voluntary relinquishment).

---

<sup>1</sup> The primary purpose of state licensing boards report of a physician's misconduct to the National Practitioner Data Bank is to 'restrict the ability of incompetent [health care professionals] to move from State to State without disclosure or discovery of the [professional's] previous damaging or incompetent performance.' *Anusavice*, 451 Mass. at 789 (quoting 42 U.S.C. § 11101(2) (2000)).

Therefore, Dr. Michael's voluntary submittal to jurisdiction is functionally equivalent to entry into a consent order, for the purposes of imposing reciprocal discipline pursuant to 243 CMR 1.03(5)(a)(12).

In December 2017, Dr. Michael argued that it would be unfair for the Board to impose reciprocal discipline before he exhausted his appeals of the Oklahoma Board's action. At that time, there was a possibility that the Oklahoma Supreme Court could reverse or remand the Oklahoma Board's order. Since then, the Oklahoma Supreme Court denied Dr. Michael's petition for certiorari and his petition for rehearing, thus rendering the Oklahoma Board's order a final judgment that can be used as a basis for discipline in Massachusetts.

In addition, the reasons for disciplining Dr. Michael in Oklahoma are substantially the same reasons for which he could be subject to discipline in Massachusetts. *See Board of Reg. in Med. v. Michael*, RM-15-193, Ruling on Motion for Summary Decision at 3 (Div. Admin. Law App., Dec. 5, 2017). The Oklahoma Board's grounds for disciplining Dr. Michael for fraudulent license renewal are substantially the same as "fraudulent procurement of his or her certificate of registration or its renewal." 243 CMR 1.03(5)(a)(1); *Matter of Judith Prophete, M.D.*, RM-94-851 (Board of Reg. in Med., Dec. 14, 1994). The Board's regulations permit it to discipline a physician for "failure to respond to a subpoena or to furnish the Board, its investigators or representatives, documents, information or testimony to which the Board is legally entitled." 243 CMR 1.03(5)(a)(16); *Matter of Peter Oliynyk, M.D.*, RM-08-703 (Board of Reg. in Med., Oct. 6, 2010). The Oklahoma Board's allegation that Dr. Michael refused to comply with its subpoenas is substantially the same. Under 243 CMR 1.03(5)(a)(3), physicians are subject to discipline for "gross misconduct in the practice of medicine." Gross misconduct includes sexual misconduct with employees and patients. *Ramirez*, 441 Mass. at 485; *Matter of Julian Abbey*,

*M.D.*, RM-06-962 (Board of Reg. in Med., Sept. 17, 2008). Therefore, the conduct relied upon by the Oklahoma Board for its disciplinary action against Dr. Michael is substantially the same conduct for which the Board may discipline a physician in Massachusetts.

Lastly, Dr. Michael argues that “it is impossible for [him] to ever be a threat to the general public in Massachusetts” because he never used his license to practice medicine in Massachusetts, and he let his license lapse over six years ago. Dr. Michael supports this argument by referring to 243 CMR 1.03(15), which permits the Board to “defer commencement of formal disciplinary proceedings against a physician whose license has been revoked by operation of law.” The language of this regulation provides the Board with discretion to defer disciplinary proceedings, but does not mandate the Board to do so.

Here, the Board is exercising its discretion to revoke Dr. Michael’s inchoate right to renew his license. In *Wang*, the Court referenced G.L. c. 112, § 2, which states that after a physician’s license has lapsed, the license “shall be revived upon completion of the renewal process.” See *Wang v. Board of Reg. and Discipline in Med.*, 405 Mass. 15, 18 (1989). While the Board had the discretion to wait until the physician applied for renewal of his license, before initiating disciplinary proceedings, it was not required to do so. *Id.* at 19; see *Matter of Peter J. Mulhern, M.D.*, RM-05-36 (Board of Reg. in Med., Sept. 5, 2007) (applying *Wang* in concluding that Board can indefinitely suspend physician’s inchoate right to renew medical license in Massachusetts).

As long as Dr. Michael retains this inchoate right to renew his medical license in Massachusetts, the Board is authorized to pursue disciplinary proceedings against him.



I therefore grant the Board's motion for summary decision. I recommend that the Board impose appropriate reciprocal discipline.

DIVISION OF ADMINISTRATIVE LAW APPEALS

Bonney Cashin

Bonney Cashin  
Administrative Magistrate

Dated:

**AUG - 8 2018**