COMMONWEALTH OF MASSACHUSETTS

Division of Administrative Law Appeals

Board of Registration in Medicine,
Petitioner

v. Docket No. RM-22-0588

Erkan Mutlukan, M.D.,
Respondent

Appearance for Petitioner:

Rachel N. Shute, Esq.

Appearance for Respondent:

Erkan Mutlukan, M.D., *pro se*

Administrative Magistrate:

Timothy M. Pomarole

SUMMARY OF RECOMMENDED DECISION ON PETITIONER'S MOTION FOR PARTIAL SUMMARY DECISION

The Board of Registration in Medicine ("the Board") seeks to reciprocally discipline the Respondent as a result of discipline imposed in the United Kingdom. The Board may discipline a physician because of discipline imposed in another state provided that the reasons for that discipline are "substantially the same" as those that would subject the physician to discipline in Massachusetts. Discipline imposed in foreign countries may also form the basis for reciprocal discipline in Massachusetts provided certain prerequisites are met, including notice of the charges and an opportunity to present a defense, basic fairness of the foreign system, and an adequate record. Those prerequisites are met here. Accordingly, and because the grounds for the Respondent's discipline in the United Kingdom are substantially the same as grounds upon which the Board itself could have disciplined the Respondent, reciprocal discipline is appropriate.

RECOMMENDED DECISION ON PETITIONER'S MOTION FOR PARTIAL SUMMARY DECISION

The Division of Administrative Law Appeals ("DALA") received this case on referral from the Petitioner, the Massachusetts Board of Registration in Medicine ("the Board"), which seeks recommended findings of fact and conclusions of law.

On December 1, 2022, the Board issued a Statement of Allegations ("SOA") ordering the Respondent, Erkan Mutlukan, M.D., to show cause why he should not be disciplined for: (1) being disciplined in another jurisdiction (the United Kingdom) for reasons substantially the same as those set forth at G.L. c. 112, § 5, and 243 CMR 1.03(5); and (2) for conduct that places the Respondent's competence to practice medicine into question. On January 9, 2023, Dr. Mutlukan filed his Answer. A prehearing conference was held on January 16, 2023.

On March 22, 2023, the Board filed a motion for partial summary decision. On May 1, 2023, Dr. Mutlukan filed his opposition.

The Board seeks summary decision with respect to paragraphs 1-7 of the SOA and the associated bases for relief. Paragraphs 1-3 recite background information. Paragraphs 4-7 concern disciplinary proceedings in the United Kingdom. The remaining allegations set forth in the SOA are not at issue in the Board's motion. I make no rulings or determinations with respect to those allegations.

The Board's sole proposed exhibit, which I admit into evidence as Exhibit 1, is a copy of the decision disciplining Dr. Mutlukan by a panel of the Medical Practitioners' Tribunal Service ("MPTS"), the body charged with hearing disciplinary complaints against physicians in the United Kingdom. Medical Act 1983, c. 54, § 35D (Eng.). Exhibit 1 will be referred to as "the Decision." With the exception of the title page, it will be cited by page number. The panel will be referred to as "the Tribunal," as it is in the Decision itself. Dr. Mutlukan does not dispute that Exhibit 1 is an accurate copy of the Decision.

Findings of Fact

I make the following findings of fact:

1. Dr. Mutlukan specializes in ophthalmology and neuro-ophthalmology, though he is not board certified by the American Board of Medical Specialties. He works at Neuro

Ophthalmology Eye Care, in Wilbraham, Massachusetts. He also provides optical and ophthalmological services at 16 Acres Optical in Springfield, Massachusetts. (SOA ¶ 1; Answer, p.1).[1]

2. Dr. Mutlukan has been licensed to practice medicine in Massachusetts under license number 161328 since 1999. (SOA ¶ 1; Answer, p.1).
3. Dr. Mutlukan was previously licensed/registered to practice medicine in Florida, Michigan, New York, Pennsylvania, and the United Kingdom. (SOA¶ 1; Answer, p. 1).[2]
4. In 2017, the Tribunal, consisting of three panelists, convened a multi-week hearing arising from a charging document filed by the General Medical Council ("GMC"), the body responsible for the regulation and registration of physicians in the United Kingdom. Medical Act 1983, c. 54, § 1 (Eng.). The charging document filed by the GMC alleges that, between April 2013 and March 2015, Dr. Mutlukan was "variously rude, abrupt, dismissive, confrontational, threatening, unpleasant, aggressive, disrespectful and angry towards a number of patients, colleagues, and other people," causing "people to feel upset and/or fearful and/or threatened." (Decision – title page, p. 2).
5. The GMC was represented by counsel. Dr. Mutlukan was *pro se*. (Decision – title page).
6. During the proceedings, the burden of proof rested with the GMC to prove its allegations against Dr. Mutlukan. The standard of proof was "the balance of probabilities, i.e., whether it is more likely than not that the events occurred." (Decision – p. 8).

[1] Dr. Mutlukan's Answer provides additional context and information vis-à-vis his background. I omit this additional information because it is not clear whether it is disputed and, in any case, it is not material to this decision.

[2] It appears from materials submitted by Dr. Mutlukan that he was previously registered to practice in Ireland but was recently removed from its register for non-payment of fees.

7. During the proceedings, the Tribunal ruled on "applications" (which I construe to be the functional equivalent to motions in American practice) by both parties. These included a successful application by the GMC to amend a modest typographical error in the charging document, an unsuccessful application by the GMC to admit a witness statement into evidence, and an application by Dr. Mutlukan to strike allegations that resulted in a small number of the allegations being stricken.[3] (Decision – pp. 2-3, 46-74).[4]
8. The Tribunal heard testimony from sixteen witnesses called by the GMC and two witnesses on behalf of Dr. Mutlukan. The Tribunal received two witness statements and documentary evidence that included e-mails and patient consultation notes. (Decision –pp. 7-8). Dr. Mutlukan cross-examined every patient. (Decision – p. 30).
9. The Tribunal's detailed factual findings[5] included the following:

    a. On G.L. c. 4, § 7(26)(c), 2013, Dr. Mutlukan was "unpleasant" and "dismissive" to Patient B. The Tribunal also found that Dr. Mutlukan banged into a table twice, causing it to collide with Patient B. After the first instance, Patient B exclaimed "Ow" in pain and shock. Dr. Mutlukan failed to acknowledge his actions and failed to apologize to Patient B. His conduct left Patient B frightened and more apprehensive about medical procedures. (Decision – pp. 9-11, 27).

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[3] Dr. Mutlukan's applications were made under Rule 17(2)(g) of the General Medical Council's Fitness to Practice Rules, which provides that "the practitioner may make submissions as to whether sufficient evidence has been adduced to find some or all of the facts proved and whether the hearing should proceed no further as a result[.]" General Medical Council, Fitness to Practice Rules (2004) <https://www.gmc-uk.org/-/media/documents/consolidated_version_of_FTP_Rules__as_amended_29Nov17_.pdf_72742310.pdf> (last visited July 25, 2024)

[4] Appended to the body of the Decision are annexes (paginated consecutively with the body of the Decision) that discuss the parties' applications, the Tribunal's rulings, and its reasoning.

[5] It bears mention that I am not making findings as to the underlying accuracy of the facts found by the Tribunal—only that the Tribunal, in fact, made these findings.

b. In or around September 2013, Dr. Mutlukan had a disagreement with Chemist C regarding a prescription. Chemist C told him that he needed to furnish certain information before she could process the prescription. Dr. Mutlukan said that she needed to obtain this information. Dr. Mutlukan started to speak in an aggressive manner, and when Chemist C attempted to end the exchange because there were patients nearby, Dr. Mutlukan ordered her to write down that she did not have time to speak to a doctor. (Decision – pp. 11-12).

c. On another occasion in September 2013, Dr. Mutlukan spoke in an aggressive and threatening manner to Chemist C. He said that he was going to report her and get her license removed. He would not let her speak and kept telling her not to interrupt him. The conversation left Chemist C "shaken" and "frightened." She felt "threatened." (Decision – pp. 12, 27).

d. On September 20, 2013, Dr. Mutlukan "was having a fairly heated and animated conversation with [a] charge nurse." He was agitated and pointing his finger at her. Physician D attempted to ask Dr. Mutlukan what was wrong. Dr. Mutlukan refused to speak with Physician D and, in a dismissive manner, told him to go away. Dr. Mutlukan was rude, aggressive, and disrespectful in his interaction with Physician D. (Decision – pp. 14-15).

e. On G.L. c. 4, § 7(26)(c) 2013, Dr. Mutlukan yelled after Patient E and his wife as they left an examination room, declaring that they "had no respect for doctors." Other patients were within earshot of this outburst. This upset Patient E and his wife. (Decision – pp. 15-16, 26).

f. In June 2014, Dr. Mutlukan had an exchange with Physician G about the latter's use of a Dictaphone while Dr. Mutlukan was making a telephone call. Dr. Mutlukan

said "Shut up, I am talking." Physician G told him he was very rude and should not talk like that. Dr. Mutlukan unleashed a torrent of verbal abuse, went over to Physician G's desk, grabbed his shirt and knocked the Dictaphone out of his hand. Dr. Mutlukan then tried to stomp on the Dictaphone, which had fallen to the floor. As Physician G tried to leave the room, Dr. Mutlukan positioned himself in Physician G's way. Dr. Mutlukan held up his fists and said "I'll fuck you front and back." Physician G found the incident "terrifying and threatening." (Decision – pp. 16-17, 28).

g. On July 13, 2014, Physician H informed Dr. Mutlukan that cataract cases had been taken off his operating list. Dr. Mutlukan responded to Physician H in an angry and aggressive manner. Physician H was concerned that Dr. Mutlukan might physically assault him. (Decision – pp. 18-19, 27).

h. On July 14, 2014, Dr. Mutlukan yelled at switchboard staff, calling them "very primitive" and "worse than a third world country." At least one switchboard staff member felt threatened and fearful as a result of this behavior. (Decision – pp. 19-20, 28).

i. Also on July 14, 2014, Dr. Mutlukan shouted at a police officer over the telephone. (Decision – pp. 20-21).[6]

j. On G.L. c. 4, § 7(26)(C), 2014, Dr. Mutlukan consulted with Patient I, an G.L. c. 4, § 7(26)(C) woman. He was rushed and impatient and looked down at the floor while waiting for Patient I to try to open her eyes. He told Patient I's daughter to leave the room in an abrupt manner. He also stated "I will not serve your arrogant nation." Dr. Mutlukan's behavior

[6] The context of this encounter is not entirely clear, though based on the temporal proximity and other contextual details, it appears that Dr. Mutlukan's interaction with the police officer had some relationship with his earlier exchanges with the switchboard staff.

caused Patient I's daughter's heart to pound as a result of this behavior. The daughter left feeling "shocked, dumbfounded, and very upset." (Decision – pp. 21-22, 26).

k. Between November 2014 and January 2015, Dr. Mutlukan corresponded via telephone and email with employees of a healthcare services placement company in a rude, flippant, and belittling manner. In e-mail correspondence, Dr. Mutlukan employed rude and confrontational language, using words such as "I don't need your BS," "dishonest scumbag," and "shove your QMC assignment up to yourselves." The e-mails also contained racially charges epithets and language, such as "apes do too," and "dishonest primates and apes," and "keep your third world jungle you guys brought." This language was rude, confrontational, and racially derogatory. (Decision – pp. 22-24).

l. On March 10, 2015, Physician K explained to Dr. Mutlukan that he required a phased, supervised reintroduction to cataract surgery. Dr. Mutlukan responded to Physician K by shouting aggressively in this face. Physician K was left feeling "tremulous" as a result of this behavior. (Decision – pp. 24-26).

10. The Tribunal concluded that Dr. Mutlukan breached numerous paragraphs of the "Good Medical Practice" standards in effect at the time,[7] namely:

> (31) You must listen to patients, take account of their views, and respond honestly to their questions.
>
> (32) You must give patients the information they want or need to know in a way they can understand. You should make sure that arrangements are made, whenever possible, to meet patients' language and communication needs.
>
> (33) You must be considerate to those close to the patient and be sensitive and responsive in giving them information and support.

[7] The version of the Good Medical Practices standards cited by the Tribunal was in effect from April 2013 through January 2024. General Medical Council, Good Medical Practices Standards (eff. April 22, 2013) << https://www.gmc-uk.org/-/media/gmc-site/ethical-guidance/archived-guidance/good-medical-practice-english-2013---2024.pdf>> (last visited July 24, 2024)

> (35) You must work collaboratively with colleagues, respecting their skills and contributions.
>
> (36) You must treat colleagues fairly and with respect.
>
> (37) You must be aware of how your behavior may influence others within and outside the team.
>
> (46) You must be polite and considerate.
>
> (47) You must treat patients as individuals and respect their dignity and privacy.
>
> (59) You must not unfairly discriminate against patients or colleagues by allowing your personal views to affect your professional relationships or the treatment you provide or arrange.

The Tribunal concluded that Dr. Mutlukan's violations of these provisions were reprehensible, shocking, and deplorable. The Tribunal concluded that these violations amounted to misconduct. (Decision – pp. 31-32).

11. The Tribunal concluded that Dr. Mutlukan "has in the past brought and/or liable in the future to bring the medical profession into disrepute" and "has in the past breached or is liable in the future to breach one of the fundamental tenets of the medical profession." The Tribunal further concluded that "public confidence in the profession would be undermined if a finding of impairment were not made" and that, accordingly, "Dr. Mutlukan's fitness to practice is impaired by reason of his misconduct." (Decision – pp. 33).
12. The Tribunal imposed the sanction of "erasure" from the registry of physicians. (Decision – p. 43).[8]

[8] If a panel of the MPTS determines that a physician's fitness to practice medicine is "impaired," it may order: erasure, suspension, or conditional registration. Medical Act 1983, c. 54, § 35D(2) (Eng.). Erasure appears to be the equivalent of a revocation of a medical license. A physician may apply to be restored to the register of physicians. *Id.* at § 41. Suspension from the register means that, for a period not to exceed twelve months, the physician's registration "shall not have effect." *Id.* at § 35D(2)(b). Under an order of conditional registration, the physician's registration is contingent on the physician's compliance with requirements imposed by the panel. *Id*.

Analysis

I recommend that the Board's motion for partial summary decision be granted. For the reasons stated below, I conclude that there are no genuine disputes of material fact as to paragraphs 1-7 of the SOA and that the Board has established the legal basis for relief stated in the SOA. I recommend that the Board take appropriate action.

Summary decision in administrative proceedings is the functional equivalent of summary judgment in civil proceedings. *Catlin v. Bd. of Reg. of Architects*, 414 Mass. 1 (1992); *Vincent Steriti v. Revere Ret. Bd.*, CR-07-683 (DALA Dec. 10, 2009). Summary decision is appropriate when "there is no genuine issue of fact relating to all or part of a claim" and said claim or part thereof can be decided "as a matter of law." 801 CMR l.01(7)(h).

Here, there is no genuine issue of material fact with respect to paragraphs 1-7 of the SOA. Paragraphs 1-3 recite uncontested background information. Paragraphs 4-7 relate to the conclusions reached and discipline imposed by the Tribunal. These paragraphs, in all material respects, fairly summarize the Tribunal's findings and rulings. Although Dr. Mutlukan vigorously disputes the soundness and correctness of those findings and rulings, he does not dispute that the Tribunal did, in fact, make them.

Accordingly, the issue to be resolved is whether the discipline imposed by the Tribunal warrants the imposition of reciprocal discipline in Massachusetts against Dr. Mutlukan. This is a question of law.

The Board may discipline a physician because of discipline imposed "in another jurisdiction" by that jurisdiction's "proper licensing authority," provided that the reasons for that discipline are "substantially the same" as those that would subject the physician to discipline in Massachusetts. 243 CMR l.03(5)(a)(12). When there is no significant difference between another jurisdiction's reasons for discipline and grounds for discipline cognizable in Massachusetts, the

application of offensive collateral estoppel prevents physicians from relitigating the underlying facts or questions decided against them in the other jurisdiction. *Haran v. Bd. of Reg. in Med.*, 398 Mass. 571, 575 (1986). Accordingly, in cases of reciprocal discipline, the issue is whether another licensing authority has disciplined the physician for reasons substantially similar to those provided under Massachusetts law, not whether the other licensing authority's findings are correct. *Bd. of Reg. in Med. v. Merchia*, RM-18-0020, at *5 (DALA Aug. 8, 2019) ("The matter before the Division of Administrative Law Appeals is ... not the underlying facts upon which the other jurisdiction disciplined the licensee, but rather the other Board's decision to discipline and whether the grounds for the discipline are substantially similar to any detailed in G.L. c. 112, § 5 or 243 CMR 1.03(5).").

Before proceeding with the analysis any further, I note that the Board appears to take it for granted that discipline imposed by a foreign country may form the basis for reciprocal discipline under § 1.03(5)(a)(12). This is not altogether unreasonable because the language of the regulation, which authorizes reciprocal discipline imposed by "the proper licensing authority" in another "jurisdiction," is sufficiently broad to encompass the disciplinary proceedings against Dr. Mutlukan in the United Kingdom.

Nevertheless, even where the language of a statute, rule, or regulation is facially broad ("convicted in any court," for example), courts are hesitant to assume that the law in question encompasses rulings made in foreign countries unless such extraterritorial scope is stated expressly. *See Small v. United States*, 544 U.S. 385, 388-89 (2005) (interpreting a statute prohibiting firearm possession by persons "convicted in any court" and concluding that the "convicted in any court" language did not include foreign convictions); *In re Wilde*, 68 A.3d 749, 757-58 (D.C. 2013) (holding in an attorney discipline case that a foreign conviction did not constitute a "conviction" for purposes of a disciplinary statute or disciplinary rules). One reason for caution is the many

procedural and substantive differences among legal systems internationally. Some foreign laws—indeed some legal systems—do not operate consistent with our own concepts of basic fairness. *Small*, 544 U.S. at 389-90.

Offensive collateral estoppel, the doctrine that the Massachusetts Board relies on here to discipline Dr. Mutlukan, is acknowledged to implicate due process concerns. *Haran*, 398 Mass., at 577-79. Due process concerns have particular salience in determining whether to accord preclusive effect to legal rulings rendered in other jurisdictions, whose legal standards and mores may differ materially from our own.

Due process concerns arising from the application of foreign judgments are addressed through various prerequisites to the recognition of foreign rulings, which collectively fall under the doctrine of "comity." *Hurst v. Socialist People's Libyan Arab Jamahiriya*, 474 F. Supp.2d 19, 32-33 (D.D.C. 2007); *cf. Schiereck v. Schiereck*, 14 Mass. App. Ct. 378, 380 (1982) ("Because the decree was issued by a foreign court, the doctrine of comity is invoked. Under that doctrine, Massachusetts generally will recognize and enforce valid judgments rendered by a foreign court.") (internal citations omitted).[9]

I note at the outset that, although cases discussing comity usually refers to "judgments" of foreign "courts," recognition of foreign rulings under comity principles extends to rulings by administrative and other tribunals. *Avanzalia Solar, S.L. v. Goldwind, USA, Inc., No. 20 C 5035*, 2023 WL 319135, at * 6-9 (N.D. Ill. 2023) (granting preclusive effect to ruling issued by

[9] The word "comity" is also applied domestically, with respect to recognition of laws and rulings of sister states. *Elia-Warnken v. Elia*, 463 Mass. 29, 31, 972 N.E.2d 17, 19 (2012). And even in the international context, the term is used in connection with a variety of principles and circumstances, such as the decision as to whether to accord American laws extraterritorial effect or whether to excuse compliance with American law because of contrary law in a foreign country. William S. Dodge, *International Comity in American Law*, 115 Colum. L. Rev. 2071, 2120 (2015). The use of the term in this decision is confined to the recognition of juridical rulings rendered in other countries.

Panamanian utility agency that a party had breached utility regulations); *Marriage of Ten and Ten*, 11 Wash. App. 2d 1040, 2019 WL 6699974, at *4 (Wash. Ct. App. 2019) (unpublished) (citation and internal quotation marks omitted) ("judgment" for comity purposes includes juridical decisions by executive and administrative agencies); *cf. Paraschos v. YBM Magnex Intern., Inc.*, 130 F. Supp.2d 642 (E.D. Penn. 2000) (citation omitted) (comity is applied "in deference to the foreign country's legal, judicial, legislative, and administrative system of handling disputes over which it has jurisdiction, in a spirit of international cooperation"). Consistent with this breadth, the recognition of foreign judgments may extend to professional discipline imposed in foreign countries. *In re Conduct of Skagen*, 476 P.3d 942, 950-54 (Or. 2020) (concluding that discipline imposed by attorney disciplinary tribunal in New Zealand justified reciprocal attorney discipline in Oregon).

Turning to the requirements for comity, the seminal case on the subject, *Hilton v. Guyot*, 159 U.S. 113 (1895),[10] provides that a foreign judgment will be deemed conclusive if "[1] rendered by a competent court, [2] having jurisdiction of the cause and of the parties, and [3] upon due allegations and proofs, and [4] opportunity to defend against them, and [5]its proceedings are according to the course of a civilized jurisprudence, and are [6] stated in a clear and formal record." 159 U.S. at 205-06 (bracketed numbers added); *see also Perkins v. Perkins*, 225 Mass. 82, 86-87 (1916) ("The principle upon which judgments of foreign courts are accorded their full effect is that where parties

[10] As the Massachusetts Appeals Court has observed, *Hilton* is the "seminal case" on comity. *Ravasizadeh v. Niakosari*, 94 Mass. App. Ct. 123, 129 (2018). Many cases in Massachusetts dealing with comity recite additional standards, depending on the subject matter. *See, e.g., Khan v. Saminni*, 446 Mass. 88, 95 (2006) (discussing comity standards for child custody determinations rendered in a foreign country). There are also specific statutes governing the recognition of certain kinds of foreign judgments, such as the Uniform Foreign Money-Judgments Recognition Act, G.L. c. 235, § 23A, which permits the recognition and enforcement of foreign judgments that are "final and conclusive and enforceable where rendered ... to the extent that it grants or denies recovery of a sum of money." Because it does not appear that any domain-specific rules or statutes apply to the present situation, I rely upon the standards enunciated in *Hilton*.

have once litigated fairly a dispute in the courts of any civilized country, the same question ought not be tried anew by the courts of another jurisdiction.") (citation omitted). The foreign judgment will not be deemed conclusive, however, if "some special ground is shown for impeaching the judgment, as by showing it was affected by fraud or prejudice, or that by the principles of international law, and by the comity of our own country, it should not be given full credit and effect." 159 U.S. at 206.

The party requesting that comity be applied to a foreign judgment bears the initial burden of showing that it is appropriate. *In re Cortuk*, 633 B.R. 236, 267 (Bankr. D.N.J. 2021). If the application of comity is found appropriate, the burden shifts to the party opposing its application to establish some ground for impeaching the judgment. *Id.* (citation omitted); *Donnelly v. F.A.A.*, 411 F.3d 267, 270 (D.C. Cir. 2005).

As to requirements [1] and [2], nothing in the record indicates that the Tribunal was not a competent forum or that it lacked jurisdiction over the disciplinary charges or Dr. Mutlukan. The Tribunal was authorized by statute to hear disciplinary charges brought by physicians practicing in the United Kingdom. Medical Act 1983, c. 54, § 35D (Eng.). And the charges against Dr. Mutlukan all arose in the context of medical services he rendered in the United Kingdom.

With respect to requirement [3], the record indicates that the charging document filed by the GMC set forth "due allegations" against Dr. Mutlukan because he was provided notice of the disciplinary charges levied against him so as to enable him to respond. *See In re Cortuk*, 633 B.R. at 268-69 (concluding that foreign proceedings against bankruptcy debtor were brought upon due allegations because he was provided with notice reasonably calculated to enable him to defend against charges in the foreign tribunal). For example, Dr. Mutlukan had sufficient notice to propose and arrange for witnesses in his defense. Moreover, the General Medical Council's Fitness to Practice Rules expressly provide for both initial notice of allegations and charges (Rules 7, 9, and

15), and also pre-hearing meetings during which information about the case is exchanged between the parties (Rule 16(6)). Nothing in the record indicates that these procedures were not followed in the disciplinary proceedings against Dr. Mutlukan. And, as described at length in the Decision, the GMC marshalled "proofs" (that is to say, evidence) in support of its allegations.

Requirement [4] is satisfied because Dr. Mutlukan "had the opportunity to defend against" the evidence presented by the GMC. He filed a successful application to strike some portions of the charging document and presented evidence in his defense as to the remaining charges levied against him. Some of his factual defenses were successful, such as those asserted in response to the allegations about a person identified as Patient A. The Tribunal ruled in his favor on all aspects of the claims relating to that patient. (Decision – pp. 8-9).

The next requirement, [5], is that the decision was "according to a course of a civilized jurisprudence," which turns on whether it was "fair and impartial." *In re PT Bakrie Telecom Tbk*, 628 B.R. 859, 878 (Bankr. S.D.N.Y. 2021). This standard does not require the foreign jurisdiction to mirror the due process jurisprudence of the United States. *Society of Lloyd's v. Ashenden*, 233 F.3d 473, 477 (7th Cir. 2000). Rather, it refers to "a concept of fair procedure simple and basic enough to describe the judicial processes of civilized nations, our peers." *Id.*

As a general matter, the courts of the United Kingdom have long been accepted as "civilized" for purposes of comity. *See Society of Lloyd's*, 233 F.3d at 477 ("It is true that no evidence was presented in the district court on whether England has a civilized legal system, but that is because the question is not open to doubt."); *British Midland Airways Ltd. v. International Travel, Inc.*, 497 F.2d 869, 871 (9th Cir. 1974) ("United States courts which have inherited major portions of their judicial traditions and procedure from the United Kingdom are hardly in a position to call the Queen's Bench a kangaroo court."). As an example of one of those traditions, the statute governing medical discipline in the United Kingdom expressly authorizes the GMC and physicians

to appeal adverse tribunal determinations to those courts. Medical Act 1983, c. 54, §§ 40-40B (Eng.).

I note that the MPTS is a committee of the GMC. Medical Act 1983, c. 54, §§ 1(3)(g), 35D & sch. 1, § 19F (Eng.). The inclusion of both investigatory and adjudicative functions within one agency is not an uncommon arrangement in the United States and, generally speaking, is compatible with American concepts of due process. *See*, *e.g.*, *Withrow v. Larkin*, 421 U.S. 35, 47-58 (1975) (rejecting claim that medical board's role in investigating possible misconduct, presenting charges, ruling on those charges, and imposing possible sanctions violated due process rights); *Raymond v. Bd. of Reg. in Med.*, 387 Mass. 708, 714-17 (1982) (rejecting claim that Board of Registration in Medicine "impermissibly mixed investigative and adjudicative functions").

With respect to the final requirement, [6], the proceedings against Dr. Mutlukan are stated in a "clear and formal record," or to put it another way, a record that outlines the issues considered, the rulings made, and the bases for those rulings. *Compare In re PT Bakrie Telecom Tbk*, 628 B.R. at 884 (holding that foreign tribunal's ruling in commercial matter was not reflected in a "clear and formal record" where it did not indicate whether and how it considered the rights of creditors) (collecting cases) (citations omitted). The Tribunal's Decision methodically outlines the steps in its analysis and the issues to be decided, describes the evidence the Tribunal considered and the parties' arguments pertaining thereto, explains the reasons for its credibility determinations, and clearly sets forth and explains not only its ultimate ruling, but subsidiary determinations as well.

Based on the foregoing, I conclude that the requirements of *Hilton* have been met and that comity may be applied to the Tribunal's Decision. Accordingly, the Tribunal's order of erasure will be given preclusive effect for reciprocal discipline purpose unless "some special ground is shown for impeaching" the order. Dr. Mutlukan bears the burden of establishing such grounds. *In re Cortuk*, 633 B.R. at 267; *Donnelly*, 411 F.3d at 270. Moreover, where, as appears to be the case

here, the gravamen of the claim sounds in fraud, the burden is particularly high. *Clarkson Co., Ltd. v. Shaheen*, 544 F.2d 624, 630 (2d Cir. 1976) (citations omitted) ("Clear and convincing evidence of fraud is required in order successfully to attack a foreign judgment, just as such proof is necessary before a [domestic] court will set aside its own judgment.").

In the instant appeal, Dr. Mutlukan contests the findings made by the Tribunal and challenges the veracity and good faith of several of the witnesses against him, but those sorts of complaints of "intrinsic fraud" are not a basis for withholding recognition of a foreign determination that otherwise passes muster under Hilton. *de la Mata v. Am. Life Ins. Co.*, 771 F. Supp. 1375, 1388–89 (D. Del. 1991), *aff'd*, 961 F.2d 208 (3d Cir. 1992) (collecting cases).[11]

Dr. Mutlukan also suggests that he did not receive a fair and impartial hearing, stating that "I personally observed the Three Panelists shuttle constantly between the hearing room to the GMC Registrar's Office for them to be dictated by the Registrar what they will find and write as finding and fact verbatim and not their free independent judgment based on evidence but merely arbitrarily." (Opposition, at 19). Dr. Mutlukan provides no context or detail relating to the panelists' visits to the GMC Registrar's Office. And I do not understand him to be suggesting that he actually accompanied the panelists to the Registrar's Office and so personally witnessed what transpired. Without intending to minimize Dr. Mutlukan's thoughts and sentiments, his statement amounts to a conclusory assertion that is not based on personal knowledge, but rather conjecture and surmise. It certainly does not suffice to create a genuine factual dispute for purposes of summary disposition. *See Madsen v. Erwin*, 395 Mass. 715, 721 (1985) ("Conclusory statements, general denials, and factual allegations not based on personal knowledge [are] insufficient to avoid

[11] Intrinsic fraud is fraud that relates directly to "the issue in controversy," such as false testimony; its contrary, extrinsic evidence, is fraud relating to the proceedings themselves that "has deprived [the party] of the opportunity to make a full and fair defense." *Angelo v. Martin*, No. 003521, 2002 WL 1299143, at *2 (Mass. Super. Ct. Apr. 23, 2002) (quoting *In re Slater*, 200 B.R. 491, 496 (1996)).

summary judgment."); *see also Commonwealth v. Carver*, 33 Mass. App. Ct. 378, 383 (1992) (witness cannot provide "mere opinion or speculation as to another person's state of mind") (citation omitted).

Having determined that there is no genuine dispute of material fact as to paragraphs 1-7 of the SOA and that the disciplinary proceedings in the United Kingdom may properly serve as a basis for reciprocal discipline in Massachusetts, the sole question remaining is whether the reason for the discipline in the United Kingdom was for reasons "substantially the same as those for which discipline is authorized in Massachusetts." *Ramirez v. Bd. of Reg. in Med.*, 441 Mass. 479, 482-83 (2004) (citation and internal quotation marks omitted).

The Board proffers four grounds for discipline authorized in Massachusetts: (a) conduct that places into question Dr. Mutlukan's competence to practice medicine based on "gross misconduct" (243 CMR 1.03(5)(a)(3)); (b) misconduct in the practice of medicine (243 CMR 1.03(5)(a)(18)); (c) violation of a rule or regulation of the Board (243 CMR 1.03(5)(a)(11), namely disruptive behavior in violation of Board Policy No. 01-01 (adopted June 13, 2001)); and (d) conduct that undermines public confidence in the integrity of the medical profession. *Raymond*, 387 Mass. at 713; *Levy v. Bd. of Reg. in Med.*, 378 Mass. 519 (1979).

Here, based on its factual findings, the Tribunal imposed discipline after determining that Dr. Mutlukan engaged in misconduct, breached "fundamental tenets of the medical profession," and had or would "bring the medical profession into disrepute," such that "public confidence in the profession would be undermined if a finding of impairment were not made." (Decision – p. 33).[12]

[12] I have not located a general definition of "impairment," but both context and the word itself connotes some impediment to the physician's ability to practice medicine at a level or in a manner consistent with public health and safety. Impairment may be based on various grounds, including misconduct, certain convictions, lacking the necessary knowledge of English, and "adverse physical or mental health." Medical Act 1983, c. 54, § 35C(2) (Eng.)

The grounds for discipline in Massachusetts most similar to those recited above are: (1) misconduct in the practice of medicine, 243 CMR 1.03(5)(a)(18); and (2) conduct that undermines the public confidence in the integrity of the medical profession. Both of these grounds may be premised on disruptive conduct. *Bd. of Reg. in Med. v. Schwartz*, RM-15-648, at *23-24 (DALA Dec. 29, 2020), *aff'd*, Board of Registration in Medicine, Adjudicatory Case No. 2015-037 (Final Decision and Order, May 20, 2021).[13]

Disruptive conduct, for disciplinary purposes, is defined in Board Policy No. 01-01: "[A] style of interaction with physicians, hospital personnel, patients, family members, or others that interferes with patient care." Policy No. 01-01 notes that disruptive behavior by a physician has a "deleterious effect upon the health care system and increases the risk of patient harm" and that behavior "such as foul language; rude, loud or offensive comments; and intimidation of staff, patients and family members are now recognized as detrimental to patient care."

The disruptive outbursts in *Schwartz* involved derogatory and inappropriate comments directed to different co-workers on one day and, on a different day, a loud argument with a fellow physician that was overheard by a patient. *Schwartz*, *supra*, at *5, 8, 24. In another case, *Matter of Philips*, Board of Registration in Medicine, Adjudicatory Case No. 2013-040 (Final Decision and Order, Nov. 19, 2014), the physician was sanctioned for insensitive remarks when speaking with a cancer patient and his wife and for disparaging the patient's oncologist to a member of the hospital staff. *Id.* at *1.

[13] One of the bases for discipline proffered by the Board is a violation of a "rule or regulation" relating to the practice of medicine, 243 CMR 1.03(5)(a)(2), namely, disruptive behavior in violation of Policy No. 01-01. DALA magistrates have questioned whether a "policy" counts as a "rule or regulation" in this context. *See Bd. of Reg. in Med. v. Pineda*, Order, RM-21-382, 2022 WL 22229195, at *2 (DALA Oct. 5, 2022); *Bd. of Reg. in Med. v. Schwartz*, RM-15-648, at *14-15, 23 (DALA Dec. 29, 2020); *Bd. of Reg. in Med. v. Bock*, RM-14-16, at *21 (DALA July 16, 2018). I need not resolve this issue, however, because disruptive behavior may ground discipline for misconduct or conduct that undermines public confidence in the medical profession.

In contrast to the conduct in *Schwartz* and *Philips*, which in both cases was confined to a small handful of incidents, the grounds for discipline imposed by the U.K. Tribunal involved several incidents over the span of nearly two years involving conduct that was directed toward patients, patient family members, colleagues, and others. The Tribunal found that many of these incidents involved conduct that was not only offensive and inappropriate, but aggressive as well, leaving their targets intimidated, frightened, and/or concerned they would be assaulted (the incidents relating to Patient B, Chemist C, Physician G, Physician H, Patient I's daughter, Physician K). One of the incidents involved racially derogatory language (the incident with the healthcare services placement company). Another incident involved physical aggression (the incident involving Physician G). All told, the reasons for discipline imposed by the Tribunal, based on its factual determinations, fall squarely within scope of disruptive conduct that justify discipline in Massachusetts for misconduct in the practice of medicine and conduct undermining public confidence in the medical profession.

Although it is a closer call, I conclude that the grounds for discipline imposed in the United Kingdom would also constitute "gross misconduct." The Supreme Judicial Court has observed that "gross" in this context connotes flagrant and extreme misconduct. *Hellman v. Bd. of Reg. in Med.*, 404 Mass. 800, 804 (1989). When the incidents forming the basis for the United Kingdom discipline are considered collectively, these incidents – as found by the Tribunal – are a flagrant and extreme departure from professional norms. Taken together, the incidents found by the Tribunal, would warrant discipline in Massachusetts based on gross misconduct.

Based on the foregoing, I recommend that the Board's motion for partial summary decision be allowed. The Board should take appropriate action.

SO ORDERED.

DIVISION OF ADMINISTRATIVE LAW APPEALS

Timothy M. Pomarole

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Timothy M. Pomarole
Administrative Magistrate

Dated: ____OCT – 9 2024_____