

COMMONWEALTH OF MASSACHUSETTS

Middlesex, ss.

Division of Administrative Law Appeals

Board of Registration in Medicine,

Petitioner,

v.

Docket No. RM-24-0608

Trung N. Nguyen, D.O.,

Date: March 18, 2025

Respondent.

Appearances:

For Petitioner: Erik R. Bennett, Esq.

For Respondent: Stephen Angelette, Esq.

Administrative Magistrate:

John G. Wheatley

RECOMMENDED DECISION

On September 26, 2024, the petitioner, Board of Registration in Medicine (Board), issued a Statement of Allegations ordering the respondent, Trung N. Nguyen, D.O., to show cause why the Board should not discipline him because he was disciplined by the medical licensing authorities in Kentucky, Maine, and Virginia. The Board referred the matter to the Division of Administrative Law Appeals (DALA) for recommended findings of fact and necessary conclusions of law.

On January 17, 2025, the Board filed a motion for summary decision. Dr. Nguyen does not oppose or object to the Board's motion. (Resp.'s Response dated Jan. 29, 2025.)

The Board has established that Dr. Nguyen was disciplined by the medical licensing authorities in Kentucky and Maine for reasons substantially the same as those set forth in G. L. c. 112, § 5, par. 8(a), (c), & (h), and 243 Code Mass. Regs. § 1.03(5)(a)(1), (3), (10), (11), & (12). The automatic suspension of Dr. Nguyen's license in Virginia, however, was based solely on the suspension of his license in Maine, and there is no similar provision under Massachusetts law that would provide grounds for reciprocal discipline. I recommend, therefore, that the Board impose the discipline it deems appropriate based on the disciplinary action taken by the licensing boards in Kentucky and Maine.

BACKGROUND

Based on the pleadings and the evidence in the record, I find the following facts to be undisputed:

1. Dr. Nguyen graduated from Oklahoma State College of Osteopathic Medicine and Surgery in 1998. He has been licensed to practice medicine in the Commonwealth of Massachusetts, under license number 276844, since 2021. (Exhibit 1, par. 1; Exhibit 3, par. 1.)

2. Dr. Nguyen either currently holds or has previously held licenses to practice medicine or osteopathy in multiple U.S. states, including (in addition to Massachusetts) Kentucky, Maine, Virginia, Colorado, Maryland, Wisconsin, and Montana. (Exhibit 1, par. 2; Exhibit 3, par. 2. See also Exhibits 4-12.)

3. On July 22, 2022, the Kentucky Board of Medical Licensure (Kentucky Board) received an investigative report from the Kentucky Office of Inspector General alleging that Dr. Nguyen "may have prescribed controlled substances improperly, sometimes overlapping, during telemedicine appointments." The report identified eight patient charts that raised concerns. (Exhibit 4.)

4. On September 14, 2022, Dr. Nguyen responded to the investigative report, contending that he prescribed medication "in accordance with appropriate clinical standards that have developed over a number of years of experience treating obese patients." (Exhibit 4.)

5. A consultant for the Kentucky Board examined the eight patient charts and concluded:

"[...] Examples of violations of [201 KAR 9:016. Restrictions on use of amphetamine and amphetamine-like anorectic controlled substances] include: no carefully prescribed diet, counseling on exercise, behavior modification and other appropriate supportive and collateral therapies on initial visit. There is not an adequate patient record in accordance with subsection (4) of [201 KAR 9:016]. No eating habits, exercise habits, weight history, and weight loss history, are asked on new

patient forms. They do not inquiry [sic] about other anorectic or other controlled substances used. They do not ask about patient's compliance to past programs. A menstruation history is not documented. There is no family history. There is no physical exam. There is no obtaining or evaluation of the seven required laboratory tests. There is no evaluation/documentation of the patient's compliance with the total treatment regimen. No KASPER reports are reviewed. There are multiple occurrences where BMI is below 27 without any co-morbidities documented yet anorectic medications are still prescribed. No sig is documented for medications prescribed. There is no justification of use of scheduled IV substances beyond three months, etc. [...] The licensee prescribed controlled substances across numerous state lines with multiple refills. There is no evidence of any obesity specialty knowledge. The patients simply pay for a virtual visit and obtain medication."

(Exhibit 4.)

6. Dr. Nguyen admitted that he did not obtain and review Kentucky All Schedule Prescription Electronic Reporting (KASPER) reports for his patients. (Exhibit 4.)

7. Dr. Nguyen and the Kentucky Board entered into an "Agreed Order," effective March 8, 2023, that restricted his license to practice medicine in Kentucky. Among other things, the order prohibited Dr. Nguyen from prescribing, dispensing, administering, or otherwise professionally utilizing controlled substances. (Exhibit 1, pars. 3, 4; Exhibit 3, pars. 3, 4; Exhibit 4; Exhibit 5.)

8. The stated purpose of the Agreed Order was to resolve the Kentucky Board's pending investigation without an evidentiary hearing. (Exhibit 4.)

9. The Agreed Order set forth stipulations of both fact and law. Dr. Nguyen stipulated that he "engaged in conduct which violate[d] the provisions of KRS 311.595(9) [as illustrated by KRS 311.597(4)] and KRS 311.595(12)." (Exhibit 4.)

10. Dr. Nguyen agreed that any violation of the Agreed Order "would provide a legal basis for additional disciplinary action." (Exhibit 4.)

11. On December 30, 2022, while the Kentucky matter was pending, Dr. Nguyen applied for renewal of his license to practice osteopathic medicine in Maine. The application inquired whether Dr. Nguyen had been "notified of the existence of allegations involving [him], filed with or by ANY licensing authority . . . and which allegations are open as of the date of [the] application." Dr. Nguyen answered "No" to this question. (Exhibit 10.)

12. On May 18, 2023, the Maine Board of Osteopathic Licensure (Maine Board) suspended Dr. Nguyen's license to practice osteopathic medicine in Maine. The Maine Board's suspension order was based on Dr. Nguyen's denial of pending allegations on his renewal application and the board's review of unspecified "disciplinary documents" from licensing authorities in Kentucky and Alabama. The Maine Board cited the following violations in support of its suspension order:

"A. 32 M.R.S. § 2591-A(2)(A) for fraud or deceit in in [sic] obtaining a license
B. 32 M.R.S. § 2591-A(2)(E) for incompetence. . . .
C. 32 M.R.S. § 2591-A(2)(F) for unprofessional conduct. . . .
D. 32 M.R.S. § 2591-A(2)(N) for restriction of a license to practice medicine or other disciplinary action following the institution of disciplinary action by another state . . . if the conduct resulting in the disciplinary or other action involving the license would, if committed in [Maine], constitute grounds for discipline under [Maine law]."

(Exhibit 10.)

13. On June 12, 2023, Dr. Nguyen entered into an "Interim Consent Agreement" with the Maine Board and Maine Attorney General, pursuant to which he agreed to a continued suspension of his license until "the matter is resolved by an adjudicatory hearing or other Board action." (Exhibit 11.)

14. On November 28, 2023, the Virginia Department of Health Professions suspended Dr. Nguyen's license to practice medicine in Virginia because of the Maine Board's suspension of his license to practice osteopathic medicine in Maine. (Exhibit 12.)

15. On April 1, 2024, the Kentucky Board terminated the restrictions that the Agreed Order had imposed on Dr. Nguyen's osteopathic license. (Exhibit 4.)

ANALYSIS

The Board may discipline a physician because of discipline imposed by another state's 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 Code Mass. Regs. § 1.03(5)(a)(12). When there is no significant difference between another state's reasons for discipline and the grounds for discipline cognizable in Massachusetts, the doctrine of collateral estoppel prevents physicians from relitigating the underlying facts or questions decided against them in the foreign jurisdiction. *Haran v. Board of Registration in Med.*, 398 Mass. 571, 575 (1986); *Matter of Corey J. Meyers, M.D.*, Board of Registration in Medicine, Adjudicatory Case No. 2012-027 (Final Decision and Order, May 22, 2013).

There is no genuine dispute that Dr. Nguyen was disciplined by the licensing authorities in Kentucky, Maine, and Virginia. See *Ramirez v. Board of Registration in Med.*, 441 Mass. 479, 485 (2004) (holding that discipline imposed by consent order in lieu of an evidentiary hearing in another state was grounds for reciprocal discipline in Massachusetts). The Kentucky Board imposed restrictions on Dr. Nguyen's license, including a prohibition on prescribing certain medications, and his licenses in Maine and Virginia were suspended. Dr. Nguyen is subject to reciprocal discipline in Massachusetts if the reasons for such discipline are substantially the same as those that would subject a physician to discipline in this state.

The Kentucky Board's grounds for imposing discipline are substantially the same as provisions that would subject a physician to discipline in Massachusetts. The Kentucky Board disciplined Dr. Nguyen under Ky. Rev. Stat. § 311.595(9) & (12). The first provision, § 311.595(9), authorizes the board to discipline a physician who has "[e]ngaged in dishonorable, unethical, or unprofessional conduct of a character likely to deceive, defraud, or harm the public or any member thereof[.]" This basis for discipline is analogous to 243 Code Mass. Regs. § 1.03(5)(a)(10), under which a physician may be disciplined for "[p]racticing medicine deceitfully, or engaging in conduct which has the capacity to deceive or defraud." The second provision cited by the Kentucky Board, § 311.595(12), imposes discipline on a physician who has "[v]iolated or attempted to violate . . . any provision or term of any medical practice act, including but not limited to the code of conduct promulgated by the board . . . or any other valid regulation of the board[.]" A substantially similar basis for discipline is provided under G. L. c. 112, § 5, par. 8(h), which subjects a physician to discipline for "violating any rule or regulation of the board, governing the practice of medicine." See also 243 Code Mass. Regs. § 1.03(5)(a)(11). The discipline Dr. Nguyen received in Kentucky is therefore grounds for reciprocal discipline in Massachusetts.

The Maine Board cited four grounds for suspending Dr. Nguyen's license, each of which also has a Massachusetts analog. The first provision, 32 M.R.S. § 2591-A(2)(A), subjects a physician to discipline for "fraud or deceit in obtaining a [medical license]." This is substantially the same as G. L. c. 112, § 5, par. 8(a) and 243 Code Mass. Regs. § 1.03(5)(a)(1), which impose discipline for "fraudulent procurement" of a physician's "certificate of registration or its renewal." The second and third reasons cited by the Maine Board, incompetence in the practice of medicine and unprofessional conduct, 32 M.R.S. § 2591-A(2)(E)&(F), are analogous to provisions in Massachusetts that impose discipline for "conduct which places into question the physician's competence to practice medicine," G. L. c. 112, § 5, par. 8(c), and for "[m]isconduct in the practice of medicine," 243 Code Mass. Regs. § 1.03(5)(a)(18). See also 243 Code Mass. Regs. § 1.03(5)(a)(3). Lastly, the Maine Board cited a provision for reciprocal discipline that is substantially the same as 243 Code Mass. Regs. § 1.03(5)(a)(12), quoted above. The Board may therefore discipline Dr. Nguyen based on the discipline he received in Maine as well.

The Virginia Department of Health Professions disciplined Dr. Nguyen solely because his osteopathic license was suspended in Maine. Virginia law imposes a mandatory, immediate suspension, without a hearing, when another jurisdiction

suspends or revokes a physician's medical license for reasons other than nonrenewal. Va. Code Ann. § 54.1-2409. The reasons for the other jurisdiction's disciplinary action are irrelevant. See *id.* There is not a similar provision under Massachusetts law that would subject a physician to automatic suspension based on discipline imposed by another licensing authority. There is no basis, therefore, to impose reciprocal discipline based on the suspension of Dr. Nguyen's license in Virginia.

CONCLUSION AND RECOMMENDATION

Based on the foregoing, the Board may discipline Dr. Nguyen because of the discipline he received in Kentucky and Maine, but not because of the suspension of his license in Virginia. I recommend that the Board impose upon Dr. Nguyen the discipline it deems appropriate considering the findings and conclusions set forth above.

Division of Administrative Law Appeals

/s/ John G. Wheatley

John G. Wheatley
Administrative Magistrate