

COMMONWEALTH OF MASSACHUSETTS

Middlesex, ss.

Division of Administrative Law Appeals

Board of Registration in Medicine,
Petitioner,

No. RM-24-0595

Dated: February 13, 2025

v.

Mohamed Och, M.D.,
Respondent.

ORDER GRANTING SUMMARY DECISION

This is a disciplinary proceeding brought by the Board of Registration in Medicine (board) against Dr. Mohamed Och. Complaint counsel has filed a motion for summary decision, which Dr. Och has opposed.

The statement of allegations alleges that Dr. Och has been convicted in federal court on three counts of unlawful distribution of a controlled substance. Dr. Och admits this allegation. He also admits that:

At trial, there was evidence that [Dr. Och] prescribed Adderall and Xanax without doing proper examinations, obtaining prior medical records, or performing drug testing despite evidence that the patients, who were undercover officers, appeared to have been participating in drug diversion.

Complaint counsel maintains that Dr. Och's admissions warrant summary decision. The legal bases for discipline pursued by complaint counsel are: that Dr. Och has "engaged in conduct that undermines the public confidence in the integrity of the medical profession"; that he "has been convicted of a criminal offense which reasonably calls into question his ability to practice medicine"; and that he "has been convict[ed] of any crime." *See Raymond v. Board of Registration in Med.*, 387 Mass. 708 (1982); G.L. c. 112, § 5(g); 243 C.M.R. 1.03(5)(a)(7).

Under 801 C.M.R. § 1.01(7)(h), summary decision is available when "there is no genuine issue of fact . . . and [the moving party] is entitled to prevail as a matter of law." Dr. Och's

primary argument is that this rule conflicts with the board's enabling act, which predicates any board disciplinary action on a "hearing." G.L. c. 112, § 5.

As Dr. Och observes, a comparable argument based on parallel statutory language found success in *Veksler v. Board of Registration in Dentistry*, 429 Mass. 650 (1999). The petitioner there "wanted to present evidence to the board to explain her actions," hoping to secure "a sanction that accounted for her individual circumstances." *Id.* at 652. The Supreme Judicial Court agreed that the board's entry of summary decision was inconsistent with the applicable statute's demand for a "hearing." *Id.* at 651 (citing G.L. c. 112, §§ 52D, 61). The board was required to obey that requirement even in the face of any conflicting regulations. *Id.* at 652.

Nevertheless, Dr. Och's argument is defeated by the more recent decision in *Kobrin v. Board of Registration in Med.*, 444 Mass. 837 (2005). The petitioner in that matter was convicted of Medicaid fraud. He so admitted. *Id.* at 839. The administrative magistrate granted summary decision in complaint counsel's favor, and the board relied on the magistrate's findings and conclusions. *Id.* at 839-41.

The Supreme Judicial Court discerned no error. Summary decision was an appropriate basis for the magistrate's determination that discipline was warranted, because:

[N]either the statute nor due process required . . . a hearing to take evidence concerning undisputed facts. Such a hearing would be a meaningless exercise. In his answer to the statement of allegations, the petitioner admitted that he had been convicted and sentenced. The magistrate was entitled to rely on the conviction as . . . conclusive "proof" . . . that the petitioner had been convicted of Medicaid fraud, which reasonably called into question his ability to practice medicine.

Id. at 846. The *Kobrin* Court described *Veksler* with approval as safeguarding "a right of allocution, the right to present mitigating factors prior to sentencing." *Id.* That right was not denied to the *Kobrin* petitioner, because the board itself accepted and considered his disposition-specific affidavits and arguments. *Id.* at 849.

Dr. Och admits the fact of his conviction on charges of unlawful distribution of a controlled substance. That conviction suffices to establish the three alleged bases for discipline. Dr. Och has been convicted of a crime. His specific prescribing-related offense calls into question his ability to practice medicine, given its “close nexus to the practice of medicine.” *See Matter of Mavroidis*, No. 01-27-DALA, at *3 (Bd. Reg. Med. Nov. 19, 2008). And any criminal behavior tends to undermine public confidence in the medical profession, because such behavior “is antithetical to a commitment to preserve life, alleviate suffering, and restore health.” *Matter of Cogswell*, No. 2022-5, at *3 (Bd. Reg. Med. Feb. 29, 2024).

Dr. Och’s remaining arguments are: that he was acquitted of certain additional counts; that his usual practices were lawful; and that his convictions resulted from a deceptive government operation. To the extent that the last of these arguments reflects a “collateral attack[] on the convictions themselves,” it exceeds the scope of this proceeding. *Kobrin*, 444 Mass. at 847. To the extent that any of Dr. Och’s arguments are intended as offering disposition-specific mitigating factors, they will be directed most properly and effectively to the board itself at a later date. *Id.* at 849.

In view of the foregoing, complaint counsel’s motion for summary decision is ALLOWED. A recommended decision is hereby entered in complaint counsel’s favor to the effect that the board may impose discipline on Dr. Och on the basis of the allegations and theories appearing in the statement of allegations.

Division of Administrative Law Appeals

/s/ Yakov Malkiel
Yakov Malkiel
Administrative Magistrate