

COMMONWEALTH OF MASSACHUSETTS

Suffolk, ss.

Division of Administrative Law Appeals

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Board of Registration in Medicine,  
Petitioner

Docket No. RM-15-193

v.

Medhat Michael, M.D.,  
Respondent

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**RULING ON MOTION FOR SUMMARY DECISION**

**INTRODUCTION**

On May 8, 2015, the Board of Registration in Medicine issued a Statement of Allegations that ordered Medhat Michael, M.D., to show cause why he should not be disciplined pursuant to 243 CMR 1.03(5)(a)12. The Board relies on an order from the Oklahoma State Board of Medical Licensure and Supervision (Oklahoma Board) accepting Dr. Michael's Voluntary Surrender to Jurisdiction as grounds that Dr. Michael was disciplined in another state for conduct substantially the same as that for which discipline is authorized in Massachusetts. Dr. Michael argues the Oklahoma order does not constitute discipline because he has appealed the order in Oklahoma.

The Board referred *In the Matter of Medhat Michael, M.D.* to the Division of Administrative Law Appeals for recommended findings of fact and necessary conclusions of law. The Board filed a Motion for Summary Decision on March 11, 2016. Dr. Michael filed his opposition to the Board's motion on March 24, 2016.

I have entered the following exhibits into evidence:

Ex. 1            Oklahoma Application to Declare Emergency Suspension of Dr. Medhat Michael dated December 16, 2011 (Petitioner Exhibit A);

Ex. 2 Complaint from the Oklahoma State Board of Medical Licensure and Supervision dated June 4, 2012 (Petitioner Exhibit B);

Ex. 3 Minutes from the March 6, 2014 Oklahoma Board meeting where the Oklahoma Board accepted Dr. Michael's Voluntary Surrender to Jurisdiction (Respondent Exhibit F);

Ex. 4 Oklahoma Board Order Accepting Dr. Michael's Voluntary Surrender to Jurisdiction dated March 6, 2014 (Petitioner Exhibit D);

Ex. 5 Dr. Michael's Motion for Declaratory Ruling and Motion to Vacate Order Accepting Voluntary Surrender to Jurisdiction dated October 19, 2015 with attachments (copy of the Order, Dr. Michael's affidavit sworn to October 16, 2015, Results of March 6, 2014 Oklahoma Board meeting, Dr. Michael's licensee information on the Oklahoma Board licensee website, Dr. Michael's entry in the National Practitioner Databank, court fees to be paid by Dr. Michael) (Respondent Exhibit B);

Ex. 6 Order on Dr. Michael's Motion for Declaratory Ruling and Motion to Vacate Order Accepting Voluntary Surrender to Jurisdiction dated January 5, 2016 (Petitioner Exhibit E; Respondent Exhibit C);

Ex. 7 Dr. Michael's appeal of the Order on Dr. Michael's Motion for Declaratory Ruling and Motion to Vacate Order Accepting Voluntary Surrender to Jurisdiction dated January 8, 2016 (Respondent Exhibit D);

Ex. 8 Supreme Court of Oklahoma allowing appeal dated February 16, 2016 (Petitioner Exhibit F; Respondent Exhibit E);

Ex. 9 Affidavit of Medhat Michael, M.D. dated March 19, 2016 (Respondent Exhibit A).

## UNDISPUTED FACTS

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

1. Medhat Michael, M.D. was licensed to practice medicine in Massachusetts in 2001, although he has never practiced in the Commonwealth. (Exhibit 9).
2. Dr. Michael was licensed to practice medicine in Oklahoma from December 6, 2004 to March 6, 2014. (Exhibit 5).
3. On December 18, 2011, Dr. Michael allowed his Massachusetts license to lapse. (Exhibit 9).
4. On December 16, 2011, the Oklahoma Board issued an Application to Declare Emergency Suspension of Dr. Michael's license based on allegations of sexual misconduct from patients and employees and obstruction of the Board's investigation by destroying or altering patient records. (Exhibit 1).
5. On June 1, 2012, the Oklahoma Board filed a formal complaint against Dr. Michael charging him with sexual misconduct with patients, sexual misconduct with employees, felony sexual battery, obstruction of Board's investigation, falsification of medical records, prescribing controlled dangerous drugs to his spouse, refusal to comply with Board subpoenas/falsification of medical records, and fraudulent licensure renewal. (Exhibit 2).
6. In 2014, the Oklahoma Board staff and Dr. Michael entered into an agreement in which Dr. Michael would surrender his license and pay legal fees and fines in lieu of prosecution and without admitting guilt to any of the complaint's allegations. (Exhibit 4).

7. The agreement was titled "Voluntary Surrender to Jurisdiction" and was accepted<sup>1</sup> by the Oklahoma Board on March 6, 2014. (Exhibit 4).

8. As required by Oklahoma law, the agreement also was submitted to Oklahoma's Office of the Attorney General for approval. (Exhibit 6).

9. On October 19, 2015, Dr. Michael filed with the Oklahoma Board a Motion for Declaratory Ruling and to Vacate Order Accepting Voluntary Surrender to Jurisdiction. He argued that the agreement accepted by the Oklahoma Board did not meet statutory requirements for license surrender in lieu of prosecution and is, thus, void and, moreover, does not reflect the agreement he reached with Board staff. (Exhibits 3, 5).

10. In an affidavit sworn to on October 16, 2015, Dr. Michael stated that in early 2014 he agreed to: submit to the Board's jurisdiction; relinquish his medical license with no admission of guilt but did not intend his relinquishment to be a surrender of his license as a result of prosecution; no admission of wrongdoing; and no report of his license surrender to the National Practitioner Data Bank. (Exhibit 5).

11. On January 5, 2016, the Oklahoma Board issued an order denying Dr. Michael's motion concluding that Dr. Michael executed an agreement that constitutes a voluntary submittal to jurisdiction and not a surrender in lieu of prosecution.

12. As required by Oklahoma law, the order also was submitted to Oklahoma's Office of the Attorney General for approval. (Exhibit 6).

13. The Attorney General of Oklahoma approved the order (Exhibit 8).

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<sup>1</sup> The procedure in Oklahoma for settling a formal complaint with an agreement is as follows: the licensee and the Oklahoma Board staff discuss the terms of the agreement and, once an agreement is reached, the agreement is presented to the Board, which may accept or deny it. If accepted, the matter is resolved without a hearing. (Exhibit 6).

14. On January 8, 2016, Dr. Michael appealed the Oklahoma Board's decision to the Supreme Court of the State of Oklahoma. (Exhibit 7).

### DISCUSSION

When a party is of the opinion there is no genuine issue of fact relating to all or part of a claim or defense and he is entitled to prevail as a matter of law, the Party may move, with or without supporting affidavits, for summary decision on the claim or defense. If the motion is granted as to part of a claim or defense that is not dispositive of the case, further proceedings shall be held on the remaining issues.

801 CMR 1.01(7)(h).

A motion for summary decision may be granted when there is no genuine issue of material fact regarding the claims presented and a party is entitled to prevail as a matter of law. *Kobrin v. Bd. of Reg. in Med.*, 444 Mass. 837, 846 (2005). The moving party may show the absence of a genuine issue of material fact by submitting affirmative evidence that invalidates a central element of the opposing party's claim. *Kourouvacilis v. Gen. Motors Corp.*, 410 Mass. 706, 715 (1991). If the motion for summary decision is adequately made and supported, a party opposing it must respond with specific facts showing that there is a genuine, triable issue. Mass. R. Civ. P. 56(e), *Community Nat'l Bank v. Dawes*, 369 Mass. 550, 553 (1976).

243 CMR 1.03(5)(a)12 allows the Board to discipline physicians who have been: 1) "disciplined in another jurisdiction" and 2) disciplined "in any way...for reasons substantially the same" as authorized for discipline in Massachusetts. The rule is founded in the principle that the Board was created in order to regulate the practice of medicine to promote the public health, welfare, and safety. *Haran v. Bd. of Reg. in Med.*, 398 Mass. 571, 580 (1986).

There is no question that the conduct considered by the Oklahoma Board in its action against Dr. Michael is substantially the same as conduct for which the Board may discipline a physician in Massachusetts. 243 CMR 1.03(5)(a)(18) includes as grounds for discipline

"[m]isconduct in the practice of medicine." 243 CMR 1.03(5)(b) states that "[n]othing in 243 CMR 1.00 shall limit the Board's adoption of policies and grounds for discipline...." Under these provisions, sexual misconduct with patients and employees is subject to disciplinary action.

*Ramirez v. Bd. of Reg. in Med.* 441 Mass. 479, 485 (2004).

The issue here, however, is whether the Oklahoma Board's order, which is not final, is sufficient for the Board to rely on when imposing reciprocal discipline under 243 CMR 1.03(5)(a)12. Dr. Michael argues that the terms of the Voluntary Surrender to Jurisdiction presented to the Oklahoma Board—particularly the recording of the revocation of his license in the National Practitioner Data Bank—were not terms he originally agreed to. Dr. Michael is not asserting fraud, nor does he disavow his signature on the document. He argues that he was not disciplined in Oklahoma because there was no valid agreement between him and the Oklahoma Board. The Oklahoma Order is under appeal and so, he maintains, the Board here cannot act until those proceedings are resolved.<sup>2</sup>

Dr. Michael relies on *Ramirez v. Bd. of Reg. in Med.*, in which the Supreme Judicial Court considered whether a Connecticut physician who entered into a consent order with the Connecticut Department of Public Health because of allegations of sexual misconduct toward patients in his practice was subject to reciprocal discipline in Massachusetts. The court in *Ramirez* observed: "Ramirez does not challenge the authenticity or validity of the consent order, does not contend that he was denied notice or a right to a hearing in Connecticut (or that those proceedings were otherwise unfair), and does not argue that he was not disciplined in Connecticut." 441 Mass. at 484. Unlike Ramirez, however, Dr. Michael challenges the validity of the Oklahoma order, contends the proceedings were not fair, and maintains that he was not disciplined in Oklahoma.

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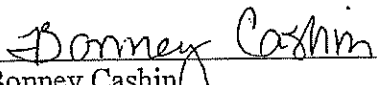
<sup>2</sup> See Respondent's letter dated November 14, 2017.

The validity of the Oklahoma Board's order is pending before the Oklahoma Supreme Court. This lack of finality raises two issues. First, any determination in this forum whether the Board may impose reciprocal discipline on Dr. Michael involves some interpretation of Oklahoma law. DALA lacks the authority to determine the meaning of Oklahoma law, however routine that exercise may appear. Second, 243 CMR 1.03(5)(a)12 is premised on a physician having had the opportunity for sufficient due process on the underlying violations in the other jurisdiction. *See Haran*, 398 Mass. at 580. That cannot be said to be the case here when Dr. Michael continues to challenge the action of the Oklahoma Board.

Should the Oklahoma Supreme Court not act on Dr. Michael's Petition for Certiorari or should it affirm the Oklahoma Board's order, the Board has shown by a preponderance of the evidence that there is a basis to discipline Dr. Michael under 243 CMR 1.03(5)(a)12. At this time, however, it would be premature to impose discipline based on the Oklahoma board's contested order. I therefore deny the Board's motion for summary decision.

Dated: December 5, 2017

DIVISION OF ADMINISTRATIVE LAW APPEALS

  
Bonney Cashin  
Administrative Magistrate

Notice sent to: James Paikos, Esq.  
Sean M. Ennis, Esq.  
Debra G. Stoller, Esq.