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SJC-12994

JOSEPH KNIGHT vs. BOARD OF REGISTRATION IN MEDICINE.

May 19, 2021.

Board of Registration in Medicine. Doctor, License to practice medicine. Administrative Law, Decision.

The petitioner, Joseph Knight, appeals from a judgment of a single justice of this court affirming a decision and order of the Board of Registration in Medicine (board or Massachusetts board) that revoked Knight's inchoate right to renew his medical license. We affirm.

Procedural background. In March 2016, the board issued a statement of allegations and order to show cause why the board should not impose discipline on Knight, alleging that (1) Knight fraudulently procured his Massachusetts license and renewals of that license by concealing the existence of investigations against him by the Oklahoma Board of Medical Licensure and Supervision (Oklahoma board) and the United States Drug Enforcement Administration (DEA), as well as personal medical conditions that interfered with his ability to practice medicine; (2) Knight was subject to reciprocal discipline in Massachusetts based on the Oklahoma board's March 6, 2014, order accepting Knight's "Voluntary Submittal to Jurisdiction"; (3) Knight practiced medicine in Massachusetts while impaired; (4) Knight failed timely to report to the board the complaint filed against him by the Oklahoma board, the suspension (and subsequent surrender) of his DEA registration, and the summary suspension of his license to practice medicine in Illinois; and (5) Knight failed to comply with Massachusetts tax laws. The board also stated that discipline could be based on proof that Knight "lacks good moral character and has engaged in conduct

that undermines public confidence in the integrity of the medical profession."

The board referred the matter to the Division of Administrative Law Appeals for further proceedings. The board filed a motion for a summary decision based on documentary evidence. Acting pro se, Knight submitted a number of documents in response to the board's motion and requested that the board decide the matter without requiring him to appear in person in Massachusetts.¹

The magistrate construed Knight's submissions as an opposition to the board's motion for a summary decision and issued a recommended decision dated May 8, 2019, concluding that the board had "met its burden of proving by a preponderance of the evidence that [Knight] fraudulently procured a certification of registration and its renewal, is subject to reciprocal discipline, practiced while impaired, failed to report discipline against him and the surrender of his DEA registration, and failed to comply with Massachusetts tax laws."

Knight (now acting through counsel) objected to the magistrate's recommended decision. In its final decision and order, the board rejected Knight's objections and adopted the recommended decision of the magistrate, but it "correct[ed]" the magistrate's decision by striking the statement that Knight "failed to comply with Massachusetts tax laws."

In a section of its decision entitled "Sanction," the board discussed each of Knight's violations as a basis for discipline: reciprocal discipline, see 243 Code Mass. Regs. § 1.03(5)(a)(12) (2012); "[m]isconduct in the practice," see 243 Code Mass. Regs. § 1.03(5)(a)(18) (2012); fraudulent procurement or renewal of medical license, see 243 Code Mass. Regs. § 1.03(5)(a)(1) (2012); practicing medicine while impaired, see 243 Code Mass. Regs. § 1.03(5)(a)(4) (2012); violation of any rule or regulation of the board, see 243 Code Mass. Regs. § 1.03(5)(a)(11) (2012), specifically, the failure timely to report changes in registration information pursuant to 243 Code Mass. Regs. §§ 2.04(12)(b)² and 2.07(8) (2012); and lack of good

¹ By that time, Knight had relocated from Massachusetts to Arizona.

² Subsequent to the board's decision, § 2.04(12)(b) was renumbered as § 2.04(14)(b). See 243 Code Mass. Regs. § 2.04(14)(b) (2019).

moral character, see Levy v. Board of Registration & Discipline in Med., 378 Mass. 519, 520 n.2, 528 (1979). "Taking into consideration all of the above," the board revoked Knight's inchoate right to renew his medical license.

Knight filed a petition for judicial review in the county court pursuant to G. L. c. 112, § 64, and a single justice of this court affirmed the board's decision. Knight now appeals.

Summary of relevant facts. The following facts are drawn from the magistrate's recommended decision, as adopted by the board and supplemented by undisputed facts from the record.

Over the course of his decades-long career as a physician, Knight has been licensed to practice medicine in multiple jurisdictions in the United States and abroad. In April 2009, Knight, who was then licensed to practice in Oklahoma, came to the attention of the Oklahoma board when a pharmacist complained that Knight "prescribes large amounts of controlled dangerous substances to out-of-town patients." The pharmacist also stated that Knight appeared to be "under the influence of controlled substances" when he came to the pharmacy to fill a controlled substance prescription that he had written for his wife.

In September 2009, after receiving an additional complaint about Knight's prescription practices, the Oklahoma board issued a "Letter of Concern," identifying several issues regarding Knight's pain management practice. During that time, Knight also came under investigation by the DEA regarding his prescribing methods with regard to controlled substances.

In August of 2011, while the investigations by the Oklahoma board and the DEA were ongoing, Knight accepted a position at the Harvard Street Neighborhood Health Center (health center) in the Dorchester section of Boston. Knight submitted his full license application to the Massachusetts board on November 28, 2011. In response to a question regarding whether he had knowledge "of any pending investigation into [his] professional competence or conduct by any governmental authority," Knight answered "no." Knight resubmitted certain forms on December 12, 2011, to clarify an answer on an unrelated issue, again denying knowledge of any pending investigation. On that basis, the board then granted Knight an initial license to practice medicine in Massachusetts on March 7, 2012.

In or around July 2012, Knight began work at the health center in Dorchester. On August 28, 2012, he applied to the

board to renew his medical license, again answering "no" to the question whether he had "been the subject of an investigation by any governmental authority, including . . . any other state medical board."

On September 5, 2012, Knight's colleagues at the health center observed that he was unwell. As a result, Knight was removed from work with the assistance of a mental health team and taken by ambulance to Beth Israel Hospital for care. Knight subsequently took a leave of absence from the health center. The health center informed Knight that, in order to return to work, he would need medical clearance from his physician. Knight submitted a letter of resignation to the health center on October 25, 2012, which disclosed that he suffered from certain medical issues, including kidney failure, stress, insomnia, and chronic headaches. Knight subsequently relocated to Arizona.

In December 2012, the Oklahoma board commenced disciplinary proceedings against Knight, alleging, among other things, that he had overprescribed "controlled dangerous drugs," and that nine of his patients had died of acute drug toxicity between 2009 and 2011. In January 2013, the DEA served Knight with an order to show cause as to why his DEA registration should not be revoked due to his excessive prescribing of controlled substances to patients who exhibited drug-seeking behavior. The DEA also immediately suspended Knight's DEA registration after concluding that Knight posed "an imminent danger to the public health and safety." Knight voluntarily surrendered his Federal controlled substances privileges in April 2013.

In September 2013, Knight's Oklahoma license expired by its own terms; he did not seek to renew it. In November 2013, Knight submitted a lengthy response to the Oklahoma board, refuting the allegations in the Oklahoma complaint. In March of the following year, the Oklahoma board held a hearing to address the charges pending against Knight. Following the hearing, the Oklahoma board entered an "Order Accepting Voluntary Submission to Jurisdiction," to which Knight agreed (Oklahoma order).

The Oklahoma order reiterated the allegations against Knight. It stated that Knight "recognize[d] his right to appear before the [Oklahoma board] for an evidentiary hearing on the allegations made against him" and "voluntarily waive[d] his right to a full hearing." Knight agreed that, if at any time he elected to apply for reinstatement of his Oklahoma license, the allegations and charges against him "will be considered by the [Oklahoma board] at such time." Knight further acknowledged

that "a hearing before the [Oklahoma board] could result in some sanction" against him.³

Also in March 2014, the Oklahoma board reported the Oklahoma order to the National Practitioner Data Bank as an "adverse action" with respect to Knight's Oklahoma license.⁴ In April 2014, upon notice of the action of the Oklahoma board, the Massachusetts board moved to summarily suspend Knight's license. Later that month, the board ratified a voluntary agreement by Knight not to practice in Massachusetts.

In July 2014, Knight applied for a second renewal of his Massachusetts license. On this occasion, he acknowledged that he had been investigated by a governmental authority and that he had been the subject of a disciplinary action. However, he elaborated on his answer by handwriting the words, "No discipline in Oklahoma." He also answered affirmatively that his "privileges to possess, dispense or prescribe controlled substances have been suspended, revoked, denied, restricted by, or surrendered to any state or federal agency." However, in response to another question, Knight denied that he had "taken a leave of absence" from practicing medicine. Knight also denied having a "medical condition that interferes in any way or limits [his] ability to practice medicine."

In March 2016, the board issued the statement of allegations against Knight that is at issue here, and the disciplinary proceedings unfolded as described supra.

Discussion. "Under G. L. c. 112, § 64, a person whose license to practice medicine has been revoked may petition the court to 'enter a decree revising or reversing the decision . . . in accordance with the standards for review provided' in G. L. c. 30A, § 14 (7)." Clark v. Board of Registration of Social Workers, 464 Mass. 1008, 1009 (2013), quoting Weinberg v.

³ In later correspondence with the Massachusetts board, Knight stated that he had "made it clear [to the Oklahoma board] that [he] had no intention of ever returning to Oklahoma or attempting to reactivate [his] Oklahoma medical license."

⁴ The Oklahoma board originally characterized the "adverse action" it had taken against Knight as a "voluntary surrender of license." Knight contested this characterization, and the Oklahoma board thereafter submitted a corrected report, which characterized the action as a "voluntary submittal to jurisdiction."

Board of Registration in Med., 443 Mass. 679, 685 (2005). See Fisch v. Board of Registration in Med., 437 Mass. 128, 131 (2002). Under the latter statute, the court can modify or set aside the decision of the board only if the petitioner demonstrates that his or her "substantial rights . . . may have been prejudiced" because the agency decision is in violation of constitutional provisions, based on an error of law, unsupported by substantial evidence, arbitrary and capricious, or an abuse of discretion, or contains one or more other enumerated defects not at issue here. G. L. c. 30A, § 14 (7). See Clark, supra, citing Weinberg, supra; Fisch, supra. This court "reviews the Massachusetts board's decision directly, even though the appeal is from a decision of a single justice." Lankheim, v. Board of Registration in Nursing, 458 Mass. 1022, 1023 (2011), citing Weinberg, supra.

Here, the petitioner raises three arguments in support of his contention that the Massachusetts board's decision was legally erroneous, arbitrary and capricious, and an abuse of discretion: (1) the board's imposition of reciprocal discipline was legally erroneous because there was no "discipline" in Oklahoma on which reciprocal discipline could be based; (2) the board's imposition of reciprocal discipline violated due process because it was based on factual allegations that remain unlitigated and as to which the petitioner retains the right to be heard in Oklahoma; and (3) the board erred in imposing discipline for violations not contained in the board's statement of allegations.

"Whether the terms of the [Oklahoma] consent order constitute discipline for Massachusetts reciprocal discipline purposes is a question of law." Anusavice v. Board of Registration in Dentistry, 451 Mass. 786, 796 (2008). Here, the parties vigorously dispute whether the Oklahoma order constitutes "discipline" as a matter of Massachusetts law. The board maintains that the Oklahoma order was the functional equivalent of Knight voluntarily resigning his license in Oklahoma in lieu of facing the ongoing disciplinary process there; Knight, on the other hand, argues that the Oklahoma order was nothing more than a promise to return to Oklahoma and to submit to its jurisdiction on the disciplinary charge if he ever were to seek to reactivate his license there. In any event, the board argues that we need not reach this issue because its decision is amply supported by other, independent grounds and Knight has therefore failed to demonstrate any substantial prejudice even if there were an error in the reciprocal discipline aspect of the board's decision.

Under the unique circumstances of the case, we take the latter course, concluding that we need not reach Knight's arguments regarding reciprocal discipline. Knight makes much of the fact that the Oklahoma order, and the Oklahoma board's report of that order to the National Practitioner Data Bank, was the triggering event for the board's investigation in Massachusetts, suggesting that reciprocal discipline is "the scaffolding upon which the [b]oard's disciplinary action against [Knight] is based." This argument misses the mark.

The fact that the report led the Massachusetts board to investigate Knight and, subsequently, to uncover multiple, independent violations of its own regulations (which had been concealed by Knight up to that point) does not diminish the significance or the severity of those subsequently discovered violations. Based on the serious nature of the undisputed violations shown here, there can be no doubt that the board was justified in reaching the result it did, with or without the imposition of reciprocal discipline.⁵ Knight has therefore failed to demonstrate prejudice arising from the board's treatment of that issue. We reach this conclusion without needing to resolve whether the Oklahoma order constituted "discipline" for purposes of the Massachusetts board's imposition of reciprocal discipline. See Anusavice, 451 Mass. at 796-798; Ramirez v. Board of Registration in Med., 441 Mass. 479, 482-484 (2004).

Knight also fails to demonstrate prejudice from the board's failure to specify in the statement of allegations that Knight was alleged to have violated 243 Code Mass. Regs. § 1.03(5)(a)(11) ("[v]iolation of any rule or regulation of the [b]oard") due to his failure to comply with his duty to update his registration information. The statement of allegations adequately identified Knight's failure to disclose the investigations by the Oklahoma board and the DEA to the

⁵ We are also unpersuaded by Knight's comparison of this case to Schwartz v. Board of Bar Examiners of N.M., 353 U.S. 232 (1957). There, the New Mexico Board of Bar Examiners conceded that the three factors underlying its decision to exclude the petitioner from the New Mexico bar "would not justify exclusion . . . if each stood alone." Id. at 246. The Massachusetts board has made no similar concession here. There may be circumstances in which an unsustainable finding by the board on one issue renders the entire result questionable, but this is not such a case.

Massachusetts board in his full license application and renewal applications as a basis for discipline, and the board's memorandum in support of its motion for summary decision specifically set forth its theory that Knight's failure to update his registration information with respect to these items could subject him to discipline under 243 Code Mass. Regs. § 1.03(5)(a)(11). In these circumstances, Knight cannot demonstrate prejudice from the board's failure to cite the particular regulation in its statement of allegations, where he had actual notice from the statement of the substantive misconduct he was alleged to have committed and an opportunity to respond.

The board's final decision and order was amply supported by the record evidence, and Knight has failed to demonstrate prejudice from any alleged legal or procedural defect. We therefore affirm the judgment of the single justice.

So ordered.

The case was submitted on briefs.
Kenneth R. Kohlberg & Andrew L. Hyams for the petitioner.
Cassandra Bolaños, Assistant Attorney General, for the respondent.