

BEFORE THE BOARD OF MEDICAL EXAMINERS
STATE OF MONTANA

IN THE MATTER OF DOCKET NO. CC-11-0166-MED REGARDING:

THE PROPOSED DISCIPLINARY)	Case No. 1755-2011
TREATMENT OF THE LICENSE OF)	
ELIZABETH A. MCBRIDE, MD,)	
License No. 7431.)	
)	

**PROPOSED FINDINGS OF FACT; CONCLUSIONS OF LAW;
AND RECOMMENDED ORDER**

I. INTRODUCTION

The Business Standards Division (BSD) seeks to impose sanctions against the license of Elizabeth A. McBride, M.D., on the basis that her Maine license to practice medicine had been sanctioned by that state's licensing board and the sanction had not been set aside.

On July 7, 2011, the Department moved for partial summary judgment in this matter on the basis that there was no material dispute that Dr. McBride's license to practice medicine in the State of Maine had been summarily suspended and not reinstated and that such action by the State of Maine constituted a violation of Mont. Code Ann. § 37-1-316(7) (which provides that, among other things, suspension or other license restriction imposed upon a licensee by another state which sanction has not been set aside constitutes unprofessional conduct), Mont. Code Ann. § 37-1-316(18) (conduct that does not meet generally accepted standards of practice), Admin. R. Mont. 24.156.625(1)(g) (having been the subject of a disciplinary action by another state based on conduct that would subject a licensee to disciplinary action under Title 37, Chapter 3 of the Montana Codes Annotated), and Admin. R. Mont. 24.156.625(1)(v) (which provides that any act that in fact constitutes unprofessional conduct). On July 22, 2011, this tribunal ordered the licensee to respond. The licensee did not respond to the motion. On August 30, 2011, this tribunal granted the motion for summary judgment finding that the licensee had violated the statutes and rules as alleged in the complaint against her license.

On September 8, 2011, Hearing Examiner Gregory L. Hanchett held a hearing in this matter related solely to the question of the appropriate sanctions to be imposed in light of the granting of summary judgment on the issue of violations. Michael Fanning, agency legal counsel, represented BSD. Dr. McBride appeared on her own behalf. Prior to hearing, BSD filed a trial memorandum outlining the sanctions that BSD felt should be imposed. At the time of the hearing, Dr. McBride, while not in total agreement with the hearing examiner's decision to grant summary judgment, nonetheless agreed that the sanctions proposed by BSD were appropriate. The hearing examiner, in light of his granting of the motion for summary judgment, and after considering the protection of the public as well as the rehabilitation of the licensee, agreed with the parties that the sanctions proposed by BSD were appropriate. Accordingly, the hearing examiner sets forth below his findings of fact, conclusions of law, and recommended order for the Board.

II. FINDINGS OF FACT

1. Dr. McBride is a duly licensed physician in both the states of Montana and Maine.

2. On October 12, 2010, Dr. McBride's Maine medical license was summarily suspended by the Maine Board of Medicine.

3. The basis for the suspension emanated from Dr. McBride's (1) failure to respond to the Maine medical board regarding a complaint filed by patient KC, (2) a complaint filed against her license by her husband alleging that Dr. McBride was suffering from physical and mental conditions that adversely affected her behavior, (3) information received from a fellow Maine physician indicating that McBride had been inappropriately prescribing narcotic medications to a person and that person's mother, and (4) information that McBride had been prescribing narcotics to a person while not in a physician/patient relationship with that person or while McBride was unable to safely practice medicine.

4. Dr. McBride's Maine summary suspension has not been set aside nor has it been appealed.

III. CONCLUSIONS OF LAW

A. *Summary Judgment As To The Existence Of Violations Should Be Entered.*

1. Summary judgment is an appropriate method of dispute resolution in administrative licensing proceedings where the requisites for summary judgment otherwise exist. *Matter of Peila* (1991), 249 Mont. 272, 815 P.2d 139. Summary judgment is appropriate where “the pleadings . . . and admissions on file, together with the affidavits, . . . show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law.” Rule 56(c), Mont. R. Civ. P.

2. The party seeking summary judgment has the initial burden of establishing the absence of any genuine issue of material fact and entitlement to judgment as a matter of law. Once the moving party meets this burden, the burden then shifts to the party opposing the motion to establish otherwise by more than mere denial or speculation. *Ravalli County Bank v. Gasvoda* (1992), 253 Mont. 399, 883 P.2d 1042. Summary judgment may be rendered on the issue of liability alone. M.R. Civ. Pro. Rule 56(c). Where a motion for summary judgment is made and supported as required by the Rules of Civil Procedure and the adverse party fails to respond to the motion as required by Rule 56, summary judgment if merited shall be entered against the adverse party. M.R. Civ. Pro. Rule 56(d).

3. Mont. Code Ann. § 37-1-316 provides in pertinent part:

The following is unprofessional conduct for a licensee . . . governed by this chapter:

* * *

(7) denial, suspension, revocation, probation, fine, or other license restriction or discipline against a licensee by a state . . . if the action is not on appeal, under judicial review, or has been satisfied.

* * *

(18) conduct that does not meet generally accepted standards of practice.

4. Mont. Code Ann. § 37-1-319 provides that the Board is authorized to adopt rules that define acts of unprofessional conduct, in addition to those contained in Mont. Code Ann. § 37-1-316.

5. Admin. R. Mont. 24.156.625(1)(g) provides that unprofessional conduct includes “having been subject to disciplinary action of another state or jurisdiction against a license or other authorization to practice medicine, based on acts or conduct by the licensee that would constitute grounds for disciplinary action under Title 37, chapter 3, MCA”

6. Admin. R. Mont. 24.156.625(1)(v) provides that unprofessional conduct also includes “any other act, whether specifically enumerated or not, that in fact constitutes unprofessional conduct.”

7. The undisputed evidence in this matter shows that Dr. McBride’s license has been sanctioned in the State of Maine by being summarily suspended due to unprofessional conduct. That sanction has not been set aside. Accordingly, there is no material dispute that Dr. McBride’s license has been sanctioned by another state and as a matter of law, that sanction constitutes a violation of Mont. Code Ann. § 37-1-316(7), Mont. Code Ann. § 37-1-316(18), Admin. R. Mont. 24.156.625(1)(g), and Admin. R. Mont. 24.156.625(1)(v).

B. The Appropriate Sanction.

At the hearing in this matter, Dr. McBride did not dispute that her license had been summarily suspended by the State of Maine. Furthermore, while it is not clear that Dr. McBride was in agreement with the hearing examiner’s decision on summary judgment, she agreed that the sanctions proposed by the Department, in light of the hearing examiner’s ruling on the summary judgment motion, were appropriate. The hearing examiner finds that in view of the circumstances surrounding the factual basis for granting summary judgment, imposition of the sanctions recommended by the BSD is appropriate. The sanction proposed is necessary first and foremost to protect the public and also to ensure the rehabilitation of the licensee.

IV. RECOMMENDED ORDER

BSD’s motion for partial summary judgment should be granted. As a matter of undisputed fact and law, Dr. McBride violated Mont. Code Ann. § 37-1-316(7) and Admin. R. Mont. 24.156.625(1) and the hearing examiner recommends that the Board find that Dr. McBride violated the statute and rule as described above. Based on the evidence presented through the summary judgment and after speaking with the parties at the hearing on sanctions, the hearing examiner recommends:

(1) that the medical license of Elizabeth A. McBride, M.D., to practice in the state of Montana be immediately and indefinitely suspended. Mont. Code Ann. § 37-1-312(1)(b).

(2) that Dr. McBride return any and all documentation of licensure to the Board of Medical Examiners within 24 hours of receiving this Final Order pursuant to Mont. Code Ann. § 37-1-312(4). Documents may be tendered to the Board at the following address:

Montana Department of Labor and Industry
Board of Medical Examiners
301 South Park Avenue
P.O. Box 200513
Helena MT 59620-0513

(3) that Dr. McBride may only return to active practice of medicine in Montana by successfully petitioning for reinstatement under Mont. Code Ann. § 37-1-314. The Board of Medical Examiners, in its discretion, may pass upon that petition and may impose such additional sanctions provided by Mont. Code Ann. § 37-1-312 as may be necessary for the protection of the public including, but not limited to:

A) Incorporation of the terms of any applicable order from the State of Maine Board of Licensure in Medicine;

B) Prior to being eligible for reinstatement of her Montana medical license, Dr. McBride must secure the unrestricted endorsement of the Montana Professional Assistance Program (or its successor established under Mont. Code Ann. § 37-3-203) which may:

i. collect and review records on Dr. McBride from licensing boards of any and all other jurisdictions, credentialing or certifying bodies, and medical peer review panels;

ii. collect and review records on Dr. McBride from facilities at which she has held privileges;

iii. collect and review records on Dr. McBride from any medical/psychological/chemical dependency evaluation or treatment she may have undergone;

iv. collect and review any records on Dr. McBride assembled through monitoring by a physician health program from a sister state or jurisdiction;

v. require that Dr. McBride submit to additional evaluation, testing and/or treatment as may be recommended by the Montana Professional Assistance Program;

vi. compel a monitoring contract under such terms as the Program directs in its discretion and demand scrupulous adherence to the terms of that contract as it may be amended from time-to-time in the professional judgment of the Program; *and*

vii. require Dr. McBride to successfully complete a period of monitoring and proven stability before being eligible to petition for reinstatement.

C) Dr. McBride shall be required to comply with certain additional conditions as may be required by the Board in its discretion at the time she petitions for reinstatement of an active medical license and to present proof acceptable to the Board in its sole and absolute discretion of compliance with any such conditions.

D) To petition for reinstatement in the future, Dr. McBride must, in the interim, regularly renew her license and comply with all continuing education requirements (if any) each year. The failure to do so may result in Dr. McBride's suspended license being terminated in which case she will be ineligible for reinstatement and will have to apply for licensure as a new applicant.

E) Any violation of this Final Order shall be deemed a material breach of the Order and grounds for a new unprofessional complaint under Mont. Code Ann. § 37-1-316(8).

DATED this 21st day of September, 2011.

DEPARTMENT OF LABOR & INDUSTRY
HEARINGS BUREAU

By: /s/ GREGORY L. HANCHETT
GREGORY L. HANCHETT
Hearing Examiner

NOTICE

Mont. Code Ann. § 2-4-621 provides that the proposed order in this matter, being adverse to the licensee, may not be made final by the regulatory board until this proposed order is served upon each of the parties and the party adversely affected by the proposed order is given an opportunity to file exceptions and present briefs and oral argument to the regulatory board.