

**BEFORE THE ALASKA OFFICE OF ADMINISTRATIVE HEARINGS ON REFERRAL
BY THE ALASKA STATE MEDICAL BOARD**

In the Matter of)	
)	
MICHAEL D. BRANDNER)	OAH No. 21-2144-MED
)	Agency No. 2021-000885

DECISION

I. Introduction

When Michael D. Brandner petitioned the Alaska State Medical Board for reinstatement of his lapsed Alaska medical license, the Board denied the petition on the basis that Dr. Brandner’s California medical license had been revoked for disciplinary reasons. Dr. Brandner requested a hearing to contest the Board’s denial. After the matter was referred to the Office of Administrative Hearings, the Division of Business, Corporations, and Professional Licensing moved for summary adjudication, arguing that as a matter of law, Dr. Brandner’s Alaska license cannot be reinstated while his California license is revoked. Following full briefing by the parties, this decision concludes that, because a current disciplinary license revocation in another state is an absolute bar to physician licensure in Alaska, the Division is entitled to summary adjudication. Accordingly, the Division’s motion is GRANTED, and the Board’s decision to deny Dr. Brandner’s license application is AFFIRMED.

II. Facts

A. Undisputed Facts

Michael Brandner obtained a medical degree from the University of Minnesota in 1977, and then participated in post-graduate training programs and practiced medicine in the Lower 48 for nearly 20 years. In 1995, Dr. Brandner successfully sought licensure in Alaska, and moved to Anchorage.¹ Dr. Brandner then practiced in Anchorage for 21 years as a Board-Certified plastic surgeon.

Dr. Brandner last renewed his Alaska license in December 2014, and it lapsed on December 31, 2016.²

In the meantime, in September 2013 Dr. Brandner was indicted on wire fraud charges. These charges were later amended to also include tax evasion charges. Briefly, the

¹ R. 365-369. Citations to “R.” are to the numbered pages in the Amended Agency Record filed on January 28, 2022.

² R. 116, 118-122.

circumstances giving rise to these charges concern Dr. Brandner driving to Central America with more than \$3 million in cashier's checks, which he then deposited in various accounts across several countries, all of which was alleged to be part of a scheme to conceal marital assets from his then-wife during divorce proceedings.³ After a trial in the United States District Court for the District of Alaska, Dr. Brandner was convicted of four counts of wire fraud and three count of tax evasion, and was sentenced to 48 months in federal prison.⁴

The Alaska Medical Board did not initiate any disciplinary action against Dr. Brandner's license at that time, and Dr. Brandner's Alaska license lapsed while he was in federal prison.⁵

In the meantime, however, the Medical Board of California began taking steps to impose discipline on Dr. Brandner's California license based on the conviction. In March 2018 that Board suspended Dr. Brandner's California license based on his conviction.⁶ In October 2018, after a hearing before the California Office of Administrative Hearings, the California Board revoked Dr. Brandner's California medical license indefinitely.⁷

The California ALJ rejected Dr. Brandner's argument "that his license should not be disciplined because his crimes did not involve his medical practice," instead concluding that Dr. Brandner's crimes constituted unprofessional conduct as defined in California law to include "the commission of a dishonest act."⁸ The California Board reported the revocation to the National Practitioner Data Bank as an action "based on the subject's professional competence or conduct, which adversely affected, or could have adversely affected, the health or welfare of patients."⁹

Dr. Brandner was released from federal custody in fall 2019, and in February 2021 he submitted an application for reinstatement of his lapsed Alaska medical license.¹⁰ The application for a medical license asks applicants a series of questions about their disciplinary history. In Part VI of the application, "Professional Fitness," Dr. Brandner accurately answered yes to questions about whether he had ever:

³ See generally, *U.S. v. Brandner*, 2021 WL 3384642 (D. Alaska 2021); *U.S. v. Brandner*, 2016 WL 4644463 (D. Alaska 2016); *U.S. v. Brandner*, 2014 WL 10402390 and 10402392 (D. Alaska 2014); see also, Exhibits submitted with Brandner Opposition, p. 30 of 71 (letter from Brandner attorney to California Medical Board).

⁴ R. 25-26.

⁵ R. 116.

⁶ R 83, 88.

⁷ R 35-37, 88-91.

⁸ R 35-37.

⁹ R. 91.

¹⁰ R. 3-15, 55.

- been charged with or convicted of a crime,
- had charges filed or been found guilty of unprofessional conduct relating to the practice of medicine,
- had his health care facility privileges terminated,
- withdrawn his facility privileges to avoid discipline,
- been investigated by a medical licensing jurisdiction or disciplined by a state medical board, and
- voluntarily or involuntarily surrendered or suspended a medical license.¹¹

The Board considered Dr. Brandner’s application at its meeting on August 20, 2021, and voted to deny the application based on AS 08.64.200(A)(4). That section provides in pertinent part that:

[E]ach physician applicant shall ... not have a license to practice medicine in another state, country, province, or territory that is currently suspended or revoked for disciplinary reasons.

In a September 1, 2021 letter to Dr. Brandner, the Board’s Executive Administrator Natalie Norberg explained that, because his California license has been revoked for disciplinary reasons, denial of the application was mandatory.¹²

B. Procedural History

The September 1 letter informed Dr. Brandner of his right to request a hearing to challenge the Board’s decision.¹³ Dr. Brandner requested a hearing, and the matter was referred to the Office of Administrative Hearings on September 27, 2021. After a brief stay while the parties attempted alternative dispute resolution, the matter returned to the hearing track in late December.

On December 29, 2021, the Division filed a motion for summary adjudication, arguing that as a matter of law the Board cannot grant Dr. Brandner a license at the present time. Because Dr. Brandner is representing himself in this action, the Administrative Law Judge then issued a procedural order informing him of his obligations in responding to a motion for summary adjudication. On January 31, 2022, Dr. Brandner filed an opposition to the Division’s motion, as well as a cross motion asking that the Board be ordered to reinstate his license.

¹¹ R. 11-12.

¹² R. 94-95.

¹³ R. 102.

After Dr. Brandner filed his briefing, the Division located and disclosed several hundred additional pages of agency record. Accordingly, a second notice was issued giving Dr. Brandner additional time to submit any further response to the Division’s motion as might be occasioned by the Division’s amended record. Dr. Brandner submitted a supplemental brief on February 18, 2022. The Division having filed no opposition to Dr. Brandner’s cross-motion, the matter is now ripe for decision.

III. Discussion

A. Applicable Law

1. Summary Adjudication

“A party may, by motion, request summary adjudication on one or more of the issues in an administrative hearing if a genuine dispute does not exist between the parties on an issue of material fact.”¹⁴ Summary adjudication is the administrative law equivalent of summary judgment in a civil court proceeding.¹⁵ Both are mechanisms for resolving disputes without a hearing or trial where certain undisputed facts of the case dictate an outcome as a matter of law.¹⁶

Where the central facts necessary to resolve the legal issue are undisputed, summary adjudication is the most efficient means of deciding a dispute. It follows, however, that summary adjudication is only appropriate where there are no genuine disputes of material fact, and where the evidence, viewed in the light most favorable to the non-moving party, supports the conclusion that a particular outcome is required as a matter of law.

“If a motion for summary adjudication is supported by an affidavit or other documents establishing that a genuine dispute does not exist on an issue of material fact, to defeat the motion a party may not rely on mere denial but must show, by affidavit or other evidence, that a genuine dispute exists on an issue of material fact for which an evidentiary hearing is required.”¹⁷

¹⁴ 2 AAC 64.250(a).

¹⁵ See *Church v. State, Dep’t of Revenue*, 973 P.2d 1125, 1129-1130 (Alaska 1999); *Human Resources Co. v. Alaska Comm’n on Post-Secondary Educ.*, 946 P.2d 441, 445 n. 7 (Alaska 1997); *Douglas v. State, Dep’t of Revenue*, 880 P.2d 113, 117 (Alaska 1994); *Smith v. State, Dep’t of Revenue*, 790 P.2d 1352, 1353 (Alaska 1990).

¹⁶ See generally *Greywolf v. Carroll*, 151 P.3d 1234, 1240-1241 (Alaska 2007) (“Summary judgment is granted if the pleadings, depositions, or other admissible evidence along with affidavits show that there is no genuine issue of material fact and that a party is entitled to judgment as a matter of law.”).

¹⁷ 2 AAC 64.250(b).

2. Requirements for Licensure and Reinstatement of Lapsed Licenses

The Board's statutes and regulations set out the requirements for obtaining medical licensure, including the requirements for reinstating a lapsed license.¹⁸ These requirements begin with AS 08.64.200, which identifies the required qualifications for physician applicants.¹⁹ Included in the list required qualifications to apply for medical licensure is that an applicant "shall not have a license to practice medicine in another state, country, province or territory that is currently suspended or revoked for disciplinary reasons."²⁰

Alaska Statute 08.64.230 provides that, if an applicant meets all requirements set out in AS 08.64.200 and passes the required examination, the Board or its Director shall grant a license.²¹ However, AS 08.64.240 prohibits the Board from granting a license if the applicant has cheated on the required examination, has surrendered a license while under investigation and the license has not been reinstated, is determined by the Board to be professional unfit, or fails to comply with a requirement of AS 08.64.

Read together, these three provisions –Sections 200, 230, and 240 of AS 08.64— establish an absolute bar to licensure for an applicant whose license in another jurisdiction is currently under disciplinary suspension or revocation. First, Section 200 establishes that the basic requirements for application include not having a currently suspended or revoked license. Next, Section 230 says that the Board must grant a license of an applicant who meets Section 200's basic requirements and passes the required examination. And Section 240 clarifies that a license still cannot issue -- even if the requirements of Section 230 appear to be met -- if certain additional disqualifying conditions exist. The disqualifying conditions noted in Section 240 give context and clarity to Section 230's requirement of passing the examination (namely, that this requirement cannot be met by cheating on the examination) and to Section 200's the prohibition on having a suspended or revoked license (namely, an applicant can't circumvent this requirement by surrendering a license while under investigation).

Lastly, the eligibility criteria set out in AS 08.64.200 apply in this case even though Dr. Brandner has been previously licensed in Alaska. The requirements for reinstatement of lapsed licenses are set out in 12 AAC 40.025. For a reinstatement of physician license that has been

¹⁸ See AS 08.64.170 et seq.; 12 AAC 40.010 – 058.

¹⁹ AS 08.64.200 does not apply to foreign medical graduates; however, Dr. Brandner is not a foreign medical graduate, so the statute applies to him.

²⁰ AS 08.64.200(A)(4).

²¹ AS 08.64.250 and 12 AAC 40.010 explain that the Board may waive the examination requirement for applicants licensed elsewhere, but those applicants still must meet the requirements of AS 08.64.200.

lapsed for between one and five years, the regulations require that the physician licensee “is qualified for a license under AS 08.64.230 and is not disqualified by AS 08.64.240.”²² As discussed above, to be qualified for a license under AS 08.64.230, an applicant must meet the requirements identified in AS 08.64.200. Those requirements include not having a license in another jurisdiction that is currently suspended or revoked for disciplinary reasons.

B. The undisputed facts require judgment in the Division’s favor.

1. No genuine disputes of material fact exist as to the current legal status of Dr. Brander’s California license.

In determining whether summary adjudication is appropriate in this case, the question is whether the undisputed facts require the denial of Dr. Brandner’s application. If they do, then summary adjudication must be granted to the Division.

The Division has set forth evidence establishing that Dr. Brandner’s California medical license is currently revoked for disciplinary reasons. Accordingly, the burden has now shifted to Dr. Brandner to “show, by affidavit or other evidence, that a genuine dispute exists on an issue of material fact for which an evidentiary hearing is required.”²³

It is critical to note at the outset the distinction between “disputed facts” and “disputes on issues of *material* fact.” Dr. Brandner disputes many facts surrounding his legal history and current licensure situation. These include:

- the facts that led to his criminal conviction,
- the fairness of that conviction,
- whether his criminal sentence was excessive,
- the reasonableness of the California ALJ’s order,
- the fairness of the California Board’s revocation of his license,
- statements he says were made to him about his lapsed Alaska license, and
- the qualifications and motivations of various judicial officers and others involved in the events of the last ten years.

But the question on summary adjudication is not whether there are facts as to which the parties disagree. Rather, the question is whether there are *material* facts in dispute. Here, as established above, Alaska law creates an absolute bar to licensure if a provider’s license is under disciplinary

²² 12 AAC 40.025(b)(4). Of note, 12 AAC 40.025(c) separately provides that the “the board may refuse to reinstate a physician license for the same reasons that it may impose disciplinary sanctions against a licensee under AS 08.64.326 and this chapter.” Here, however, the Board’s decision and the Division’s motion are based on the threshold issue of Dr. Brandner’s revoked California license.

²³ 2 AAC 64.250(b).

suspension or revocation elsewhere. Thus the only material facts at issue in this motion concern the current legal status of Dr. Brandner's California license.

Just as a party opposing a motion for summary adjudication must show that a dispute of *material* facts exists, any dispute offered as grounds for denying summary judgment must be a *genuine* dispute of material fact. Dr. Brandner makes several factual arguments that, while tangentially related to material facts, do not rise to the level of "genuine" disputes.

Dr. Brandner argues that there is a dispute of fact as to whether the California revocation was "disciplinary" in nature.²⁴ But his arguments on this issue -- based on a tortured attempt to conceptually distinguish discipline from punishment -- are not persuasive as to the existence of a genuine factual dispute about whether his was a disciplinary revocation.²⁵ Of note, the California Administrative Law Judge's Decision expressly characterizes the case as disciplinary, stating that Dr. Brandner's "convictions are substantially related to the qualifications, functions, or duties of a physician," and that therefore "cause for discipline exists pursuant to" the California statute deeming "[t]he conviction of any offense substantially related to the qualifications, functions, or duties of a physician and surgeon" to be "unprofessional conduct within the meaning of this chapter."²⁶ The decision's next and final section, in which the revocation is imposed, is entitled "Disciplinary considerations," and begins with the observation: "Cause for discipline having been established, the issue is the appropriate measure of discipline." After a discussion of relevant factors, the "Disciplinary Considerations" section ends with the conclusion that: "Public protection warrants revocation of respondent's physician's and surgeon's certificate."²⁷ There is simply no "genuine" dispute that the revocation of Dr. Brandner's California license was disciplinary in nature.

Dr. Brandner also advances the argument that his "California license is substantially reinstated."²⁸ The factual basis offered for this claim is that he is now eligible to petition the California Board for reinstatement, and has submitted a petition packet to do so. From this, he concludes:

Considering that the Medical Board of California is very efficient, competent, and speedy, we can expect that the above described 'Petition for Penalty Relief/Petition for Reinstatement' has been

²⁴ Brandner Opposition to Division's Motion, January 31, 2022, p. 9.

²⁵ Brandner Opposition to Division's Motion, January 31, 2022, p. 9.

²⁶ Exhibits submitted with Brandner January 31 Opposition Brief; PDF page 5 of 71, citing Cal. Bus. & Prof. Code section 2236, subdivision (a).

²⁷ Brandner Exhibits, PDF page 5 of 71.

²⁸ Brandner Opposition to Division's Motion, January 31, 2022, p. 16.

processed, approved and that the reinstatement of Petitioner's California Medical License is ready and in the mail. Thus, Petitioner Dr. Michael D. Brandner, MD's California Medical License is substantially reinstated.²⁹

This argument lacks merit. There is no such thing as a license that is "mostly" or "substantially" reinstated, and the requirement set out in AS 08.64.200 does not contain an exception for licenses that have "substantially reinstated." Moreover, the factual leap made by Dr. Brandner is a non-sequitur. Dr. Brandner having requested reinstatement of his California license no more establishes "substantial reinstatement" of that license than did his request for reinstatement of his Alaska license constitute "substantial reinstatement" of the license at issue in this case. Dr. Brandner offers no evidentiary or legal justification from which the Board could conclude that the legal status of his California license has changed. His submission of a reinstatement petition does not create a genuine dispute of material fact as to the current status of his California license.

Certainly, if the California Medical Board does act on Dr. Brandner's petition to reinstate his California license while this matter remains open, he should submit prompt notification of that event so that appropriate steps can be taken to determine the impact of these changed circumstances on the procedural posture of this case. But notwithstanding the possibility of some future action by the California Board, there is no genuinely disputed issue of fact as to the current status of Dr. Brandner's California license.

C. The undisputed fact that Dr. Brandner's California medical license is currently revoked for disciplinary reasons requires judgment in the Division's favor.

While Dr. Brandner's briefing recites a lengthy, sometimes convoluted personal history and makes numerous factual assertions about the circumstances giving rise to his conviction and to the revocation of his California medical license, the only *material* factual question for purposes of the Division's motion is whether Dr. Brandner has a license that is currently revoked or suspended for disciplinary reasons in another jurisdiction. The bottom line here is that the only material facts are these:

- (1) Dr. Brander's Alaska medical license lapsed in December 2016.
- (2) Dr. Brander's California medical license was revoked in 2018 for disciplinary reasons.
- (3) Dr. Brandner applied to reinstate his lapsed Alaska license in February 2021.
- (4) Dr. Brander's California medical license is still revoked.

²⁹ Brandner Opposition to Division's Motion, January 31, 2022, p. 18.


Under these undisputed facts, Dr. Brandner is currently ineligible for an Alaska medical license.³⁰

Lastly, Dr. Brandner's request for an order of summary adjudication requiring reactivation of his license fails for the same reason that the Division's prevails. Plainly, he is not entitled to an order compelling the Board to act contrary to its statutory authority. Even setting aside the issue of his revoked California license, however, Dr. Brandner still would not be entitled to an order of summary adjudication on the question of whether his license should be reinstated. Even if he could overcome the threshold issue of AS 08.64.200 qualifications, Dr. Brandner would still have the burden of proving that he is otherwise fit to practice, a question about which there appear to be genuine disputes of material fact.³¹

IV. Conclusion

The Division has met its burden of establishing its entitlement to summary adjudication as a matter of law. Because the California disciplinary revocation is an absolute bar to licensure, the Division's motion must be granted, and the Board's decision to deny the application
AFFIRMED.

Dated: March 24, 2022


Cheryl Mandala
Administrative Law Judge

³⁰ Indeed, Dr. Brandner appears to admit as much in his own briefing, acknowledging that "Alaska statute appears technically to bar Petitioner from Alaska licensure." Brandner Opposition, p. 18 (Jan. 31, 2022). To the extent Dr. Brandner contends that the Board's failure to take direct action against his license immediately following his conviction estops it from considering the facts surrounding the conviction as a bar to licensure now, this argument fails for several reasons. First, the Board's initial denial did not rely on the conviction itself, nor does this Decision on Summary Adjudication. Rather, both are based on the fact of the California license revocation which, as Dr. Brandner acknowledges, serves as a bar to licensure. Thus the reason for denial in 2021 was different from any reason available in 2014. Moreover, Dr. Brandner can show no prejudice from the Board's inaction either in 2014 (at the time of his conviction) or in 2018 (at the time of the California Board's revocation).

³¹ See generally AS 08.64.240(a)(3), (b); 12 AAC 40.025.

Adoption

The ALASKA STATE MEDICAL BOARD adopts this decision as final under the authority of AS 44.64.060(e)(1). Judicial review of this decision may be obtained by filing an appeal in the Alaska Superior Court in accordance with AS 44.62.560 and Alaska R. App. P. 602(a)(2) within 30 days after the date of distribution of this decision.

DATED this 25th day of May, 2022.

By: 

Signature
Richard Wein

Name
Board Chair

Title

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