

State of New Hampshire
Board of Medicine
Concord, New Hampshire

In the Matter of:

James P. Kartell, M.D.
(Adjudicatory Proceeding)

Docket No. 10-01

DECISION AND ORDER

Before the New Hampshire Board of Medicine (“Board”) is the adjudicatory proceeding relating to the denial of licensure of James P. Kartell, M.D. (“Respondent” or “Dr. Kartell”). On January 7, 2009, the Board voted to deny Dr. Kartell’s application for reinstatement of his license to practice medicine in New Hampshire based in part upon a determination under RSA 329:12(d)(2) and RSA 329:14, II that Dr. Kartell has not demonstrated to the reasonable satisfaction of the Board that he is of good professional character; and pursuant to RSA 329:14, II, that Dr. Kartell has committed acts that would constitute grounds for imposing discipline under RSA 329:17, I. Dr. Kartell has been convicted of a felony, has not practiced medicine in over ten years, has not participated in continuing medical education since 1998, and is ineligible for reinstatement of license under Med 301.04(c)(2). Dr. Kartell requested a hearing on the Board’s denial. On January 8, 2010, the Board issued a Notice of Hearing to Show Cause. The Board held an adjudicatory hearing on the matter on April 7, 2010. After deliberation, the Board has voted to uphold its denial of licensure to Dr. Kartell.

Background Information

On February 23, 1999, Dr. Kartell went to visit his estranged wife, who was hospitalized at Holy Family Hospital in Methuen, Massachusetts. Janos Vajda (“Mr. Vajda”), Dr. Kartell’s wife’s boyfriend was in the room. Dr. Kartell was carrying a revolver. An altercation occurred between Dr. Kartell and Mr. Vajda that led to the revolver’s discharge of a bullet that pierced Mr. Vajda’s abdomen, lacerating vital organs including the aorta. The altercation continued despite the serious nature of the injury, and ended with Dr. Kartell shooting Mr. Vajda in the back of the head. Dr. Kartell was indicted on homicide charges and convicted of voluntary manslaughter.

On December 13, 2000, Dr. Kartell signed a Settlement Agreement with the Board agreeing to settle allegations of professional misconduct with a revocation of license. Dr. Kartell's Massachusetts license was revoked as well. That year, as a result of his loss of medical license, Dr. Kartell lost privileges at Saints Medical Center in Lowell, Massachusetts and at St. Joseph's Hospital and Southern New Hampshire Medical Center, both in Nashua, New Hampshire.

During Dr. Kartell's incarceration, he did not seek to obtain continuing medical education as is required of all physicians and surgeons. He was repeatedly denied parole, and released after serving the maximum 8 years of his sentence. Dr. Kartell also did not obtain continuing medical education in the two years since his release from prison.

Dr. Kartell applied for reinstatement of his New Hampshire license on September 29, 2008. On that application, he answered "yes" to Question #1 which read "Are you certified by an American Specialty Board?" He answered "no" to Question # 10 which read "Have you ever had staff privileges, employment, or appointment in a hospital or other healthcare institution denied, limited, suspended, or revoked, or have you ever resigned from a medical staff in lieu of disciplinary action?"

On January 7, 2009, the Board voted to deny Dr. Kartell's application for reinstatement of licensure. In a letter dated January 29, 2009, Dr. Kartell requested a hearing before the Board regarding his denial of his application for reinstatement. The matter was referred to the Administrative Prosecution Unit ("APU") of the Attorney General's Office for investigation. This investigation revealed that Dr. Kartell provided inaccurate information on his application for reinstatement.

On January 8, 2010, a Notice of Hearing to Show Cause was issued and a hearing was scheduled to take place on Wednesday, April 7, 2010. It was ordered that the purpose of the show cause hearing would be for Dr. Kartell to show cause to the Board why his license should be reinstated in the State of New Hampshire. It was ordered that Dr. Robert P. Cervenka, Board Member, act as presiding officer.

On April 7, 2010, the Board heard testimony from six character witnesses for Dr. Kartell. These witnesses described him as: a kind man, good to patients, a good doctor, was responsive to needs for his services, was of excellent character, ethical, and competent. The three physician witnesses had opinions on his character based on their knowledge of Dr. Kartell before his

conviction. Each of them recognized that the lack of continuing medical education as well as his lack of professional practice for the past ten years would be a problem in granting privileges without supervision or mentoring in a program to regain skills. Mary Thake testified that she knew Dr. Kartell while he was in prison and has known him afterward. Dr. Kartell was described as considerate, courteous, and helpful teaching in prison. Michael Doran, MSW testified that he has known Dr. Kartell for about 25 years, and spoke highly of him.

Sarah T. Blodgett, Esq., Assistant Attorney General, acted as Hearing Counsel in this matter. Attorney Blodgett presented Dori Tohill, Board Investigator, as a witness. Ms. Tohill reviewed Dr. Kartell's application for reinstatement of license in New Hampshire. Ms. Tohill presented Exhibits 5A, 5B and 5C, which were letters indicating the three hospitals that revoked Dr. Kartell's hospital privileges, and contrasted that evidence with Exhibit 4, where Dr. Kartell falsely answered "no" to Question #10 on the New Hampshire reinstatement application, averring that he had not had hospital privileges suspended or revoked. Ms. Tohill indicated that the investigation revealed that Dr. Kartell was last Board Certified in 1977, but did not re-certify at any time thereafter. Dr. Kartell's answer to Question #1 on the New Hampshire reinstatement application, which read "Are you certified by an American Specialty Board?" should have been "no" not "yes" as Dr. Kartell falsely answered in Exhibit 4.

According to RSA 329:17, VI, the Board, after hearing, may take disciplinary action against any person licensed by it upon the finding that the person: "(a) has knowingly provided false information during any application for licensure or hospital privileges, whether by making any affirmative statement which was false at the time it was made or by failing to disclose any fact material to the application." RSA 329:14, II, Action on License Applications, mandates that "No application shall be granted unless the board finds that the applicant possesses the necessary educational, character and other professional qualifications to practice medicine, and that no circumstances exist which would be grounds for disciplinary action against a licensed physician pursuant to RSA 329;17, I."

Todd Flanagan, APU Investigator, testified about the forensic materials in the case. Mr. Flanagan reviewed the seriousness of the injury Mr. Vajda sustained from the first gunshot wound, and from the second gunshot, which had an entry wound from the back of the head.

Findings of Fact and Rulings of Law

1. On February 23, 1999, Dr. Kartell was on staff at Holy Family Hospital when he entered the room, where his estranged wife was a patient, with a licensed concealed weapon. Dr. Kartell shot Mr. Vajda twice, causing his death. On July 19, 2000, Dr. Kartell was convicted of Voluntary Manslaughter following a jury trial. Dr. Kartell was sentenced to serve 5 to 8 years in prison; he was released after 8 years. RSA 329:17, VI states that the Board may take disciplinary action against a licensee upon finding that he: “(j) has been convicted of a felony under the laws of the United States or any state.” Pursuant to RSA 329:14, II, the Board finds that “circumstances exist which would be grounds for disciplinary action.” For this reason, the Board denies Dr. Kartell a license.

2. The Board finds the following statutes and administrative rules apply:

- Med Rule 301.04(c)(2) (Late Renewal and Reinstatement of License) requires that all: “[a]pplicants for reinstatement shall provide ... [p]roof of completion of continuing education which meets the requirements of Med 402.01.”
- Med Rule 301.04(e) requires that all “[a]pplicants for reinstatement of license of a suspended or revoked license shall have the burden of persuading the Board that the actions which were the basis for the original disciplinary action have been satisfactorily remediated, that no additional charges of misconduct are pending, and that the applicant meets all the character and competency requirements of an applicant for initial licensure.”
- Med Rule 402.01 (effective through July 2009) required that “[a]] licensed physicians shall complete 150 hours of approved continuing medical education (CME) requirements every 3 years....” RSA 329:16-g (effective July 1, 2009) requires that “[a]s a condition of renewal of license, the board shall require each licensee to show proof at least at every biennial license renewal that the licensee has completed 100 hours of approved [CME] program within the preceding 2 years.”
- Med Rule 403.03 (Noncompliance) indicates that: “[f]ailure to complete continuing medical education requirements or to submit documentation of such completion in a timely fashion, shall result in denial of license renewal.”

Dr. Kartell has not practiced medicine in ten years. As stated above, during Dr. Kartell’s incarceration, he did not seek to obtain CMEs. He has not obtained or submitted proof of CMEs

subsequent to his release. Dr. Kartell is in violation of the aforementioned statute and rules. Pursuant to RSA 329:14, II, the Board finds that Dr. Kartell does not “possess[] the necessary educational, character and other professional qualifications to practice medicine.” For this reason, the Board denies Dr. Kartell a license.

3. Dr. Kartell did submit false information on his application for reinstatement of licensure dated September 29, 2008, contrary to Med 301.04(c)(1) / Med 301.03(a)(10) and (11) (concerning his current status of board certification) and contrary to Med 301.04(c)(1) / Med 301.03(a)(16) (concerning his loss of privileges at three hospitals). This would be grounds for disciplinary action under RSA 329:17, VI (a) as the Board finds Dr. Kartell has “knowingly provided false information during any application for professional licensure... by making any affirmative statement which was false at the time it was made...” and under Med Rule 401.05(a)(2) (Denial of Renewal). Pursuant to RSA 329:14, II, the Board finds that “circumstances exist which would be grounds for disciplinary action against a licensed physician pursuant to RSA 329:17, I.” Providing false information on two questions on a license reapplication would be grounds for a disciplinary action against a licensed physician. For this reason, the Board denies Dr. Kartell a license.

4. Finally, to the question of whether Dr. Kartell possesses the character to be granted a license. Dr. Kartell presented multiple witnesses that indicated he had good character, before his conviction of involuntary manslaughter. All thought it was out of character.

The act of taking a human life by shooting the individual in the back of the head is inconsistent with the character the Board expects of its licensed physicians. Further, Med 501.02(h) (Standards of Conduct) requires that “A licensee shall adhere to the Principles of Medical Ethics – Current Opinions With Annotations (2006-2007) as adopted by the American Medical Association.” The American Medical Association, Principles of Medical Ethics Preamble, section III reads “A physician shall respect the law...” Dr. Kartell displayed poor judgment by bringing a revolver to the hospital room of his estranged wife, becoming involved in a physical altercation with Mr. Vajda, and shooting the victim in the head. Dr. Kartell showed a lack of respect for the law and was convicted of involuntary manslaughter. The Board finds that this crime is an ethical violation that indicates that Dr. Kartell lacks the character to be licensed as a physician in New Hampshire. Pursuant to RSA 329:14, II, the Board finds that Dr. Kartell does not “possess[] the necessary ... character and other professional qualifications to

practice medicine.” For this reason, the Board denies Dr. Kartell a license.

Order

In consideration of the foregoing, the Board finds, not merely by a preponderance of the evidence but by clear and convincing evidence, that Dr. Kartell has not met his burden of proof that he should be granted a license in the State of New Hampshire. Dr. Kartell’s application for reinstatement is denied.

THEREFORE IT IS ORDERED this Decision and Order (“Order”) will become a ‘final order’ as of the effective date of the Order as further defined below; and

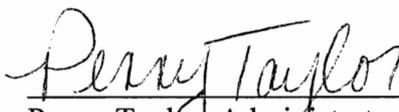
IT IS FURTHER ORDERED that in accordance with RSA 329:18-a, a ‘final order’ is a public document; and

IT IS FURTHER ORDERED that any motion for reconsideration or rehearing must conform to Med 208.01; and

IT IS FURTHER ORDERED that this Order shall take effect as an Order of the Board on the date it is signed by an authorized representative of the New Hampshire Board of Medicine.

BY ORDER OF THE BOARD/*

Dated: May 5, 2010



Penny Taylor, Administrator
Authorized Representative of the
New Hampshire Board of Medicine

/*Board members Amy Feitelson, M.D. and Nick Perencevich, M.D. recused.