

COMMONWEALTH OF MASSACHUSETTS  
BOARD OF REGISTRATION IN MEDICINE

MIDDLESEX, SS

Adjudicatory Case No. 2012-016  
(RM-12-234)

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)  
In the Matter of )  
)

David Brendel, M.D. )  
\_\_\_\_\_) )

FINAL DECISION AND ORDER

This matter came before the Board for disposition on the basis of the Administrative Magistrate's Recommended Decision incorporating a Stipulation, dated April 13, 2017, which is attached hereto and incorporated by reference. The Respondent and Complaint Counsel each submitted a Memorandum on Disposition. The Board also heard from the Respondent and Complaint Counsel regarding disposition.

After full consideration of the Recommended Decision incorporating the Stipulation, and the considerations of Patient A, the Board adopts the Recommended Decision and Stipulation. Pursuant to the provisions in the Stipulation that allow for "the parties to re-negotiate the provision in light of the Board's rejection [of any provision], the Board requested modifications to the suggested sanction. After being given an opportunity to accept or reject the modified sanction, the Respondent and his counsel agreed to the modified sanction.

Sanction

The record demonstrates that the Respondent engaged in conduct that calls into question his competence to practice medicine and engaged in conduct that undermines public confidence in the integrity of the medical profession. Therefore, it is proper for the Board to impose sanction. See Raymond v. Board of Registration in Medicine, 387 Mass. 708 (1982); Levy v. Board of Registration in Medicine, 378 Mass. 519 (1979).

In the past, the Board has dealt strictly with cases of sexual misconduct, particularly where, as in the Respondent's case, the physician is a psychiatrist or is acting

in such a role. Such cases involve a serious departure from good and accepted medical practice and a complete abuse of patient trust. See In the Matter of John A. Scorza, M.D., Board of Registration in Medicine, Adjudicatory Case No. 2005-030 (Final Decision and Order, February 20, 2008); In The Matter of Karen S. Kagey, M.D., Board of Registration in Medicine, Adjudicatory Case No. 05-15 (Final Decision and Order, November 15, 2006); and In the Matter of William Kadish, M.D., Board of Registration in Medicine, Adjudicatory Case No. 2001-XX (Consent Order, August 22, 2001). In this case, the Respondent committed boundary violations with a former patient, beginning a social relationship after terminating the psychotherapist – patient relationship and transferring the patient’s care to another psychotherapist. By doing so, the Respondent crossed the boundary which separates reasonable and appropriate professional conduct from unacceptable personal relations, all in violation of the standards set forth in *The Principles of Medical Ethics with Annotations Especially Applicable to Psychiatry* by the American Psychiatric Association (APA), making it unethical for a psychiatrist to have a sexual relationship with a current or former patient.

In determining the appropriate sanction, the Board has considered the mitigating factors proffered by the Respondent, including that the psychotherapist-patient relationship was properly terminated, that Patient A has alleged consent and denied there was no harm. The Board does not consider the arguments relative to consent and the absence of harm as defenses to the violations. “Consent is not a defense to sexual misconduct.” See In the Matter of Terrence M. O’Neill, M.D., Board of Medicine, Adjudicatory Case Number 88-44-TR (Final Decision and Order, August 9, 1994). “To take disciplinary action, the Board need not establish that a physician’s conduct caused any harm to his patient.” *Id. citing Merola and Yellin v. Board of Medicine*, Supreme Judicial Court, No. 83-99, January 17, 1984, (Memorandum of Decision) at pp.10-11. However, relative to disposition, the Board will consider that Patient A has alleged the relationship was consensual and there was no harm to her.

In the past, the Board has imposed a lesser sanction than straight revocation taking into account such factors as the nature and extent of the overall misconduct, the number of patients involved, the duration of the misconduct, and whether the physician self-reported the misconduct and cooperated with the Board. In the Matter of Terrence

M. O'Neill, M.D., Board of Registration in Medicine, Adjudicatory Case No. 88-44-TR (Final Decision and Order, August 9, 1994). In the *O'Neill* case matter the Respondent, an Ob-Gyn, did transfer the patient's care to a psychiatrist, there was no harm alleged according to the patient and the Respondent had no other violations or matters before the Board. There was only one patient involved, that patient was a former patient and there was not likely to be a recurrence of this behavior. The Board suspended his license for 3 years, which suspension was stayed seven months after the Final Decision. See In the Matter of Gerald Franklin, M.D., Adjudicatory Case No. 95-30-XX, (Consent Order, February 22, 1995), where the psychiatrist had a sexual relationship with his patient during the course of treatment. In deciding a sanction, the Board took into account that there was only one patient involved, there was unlikely to be a recurrence of this behavior, and the Respondent felt remorseful. The Board revoked his license, but allowed him to petition for reinstatement after 17 months. See In the Matter of Howard Berens, M.D., Adjudicatory Case No. 02-33-XX, (Consent Order, August 2, 2002), where the psychiatrist started a sexual relationship with a patient two months after the physician-patient relationship had been terminated. The patient declined to file a complaint and the Respondent cooperated with the Board. The Board suspended him for 3 years and stayed the suspension upon entry into a probation agreement. See In the Matter of Harold Williams, M.D., Adjudicatory Case No. 92-15-DALA, (Final Decision and Order, April 14, 1993), where the psychiatrist had a sexual relationship with his patient during the course of treatment. The Board accepted a stipulation by the parties allowing for a suspension of five years, stayed after one year upon entering into a five year probation agreement.

In light of the Respondent's sexual relationship with a former patient, and taking into consideration the aforementioned mitigating factors, the Board hereby INDEFINITELY SUSPENDS the Respondent's license to practice medicine with an immediate stay. The Respondent shall complete 20 credit hours of Continuing Professional Development (CPD) courses in boundary violations and medical ethics within 60 days. If the CPDs are not completed within 60 days, the stay will be lifted.

The Respondent shall provide a complete copy of this Final Decision and Order, with all exhibits and attachments within ten (10) days by certified mail, return receipt

requested, or by hand delivery to the following designated entities: any in- or out-of-state hospital, nursing home, clinic, other licensed facility, or municipal, state, or federal facility at which he practices medicine; any in- or out-of-state health maintenance organization with whom he has privileges or any other kind of association; any state agency, in- or out-of-state, with which he has a provider contract; any in- or out-of-state medical employer, whether or not he practices medicine there; the state licensing boards of all states in which he has any kind of license to practice medicine; the Drug Enforcement Administration – Boston Diversion Group; and the Massachusetts Department of Public Health Drug Control Program. The Respondent shall also provide this notification to any such designated entities with which he becomes associated for the duration of this suspension. The Respondent is further directed to certify to the Board within ten (10) days that he has complied with this directive. The Board expressly reserves the authority to independently notify, at any time, any of the entities designated above, or any other affected entity, of any action it has taken. The Respondent has the right to appeal this Final Decision and Order within thirty (30) days, pursuant to G.L. c. 30A, §§14 and 15, and G.L. c. 112, § 64.

Date: July 13, 2017

*Candace Lapidus Sloane, MD*

Candace Lapidus Sloane, M.D.

Chair

Board of Registration in Medicine